UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MEMORANDUM

DATE: May 26, 1999

From: Gladys Beard

TO: Sabrina Berry

Subject: Information Regarding Nutting Truck and Caster Site

Per your request, the documents you requested are attached. These documents are:

1. A copy of the enforcement agreement between US EPA and the State of Minnesota.
2. A copy of US EPA's Site Summary Report from the CERCLIS database.
3. A copy of the recommendation that is being performed at the Site.

Also, you requested that I provide you with a copy of notification to the community that the State was preparing the five-year review. It is stated in the Preliminary Close Out Report that a five-year will be completed. The Preliminary Close Out Report has been placed in the library at MPCA's office in St. Paul and at USEPA's office in Chicago.

Thank you very much. Should you have any questions, please call me at 312-886-7253.

Attachments

MINNESOTA POLLUTION CONTROL AGENCY
ENFORCEMENT DEFERRAL PILOT PROJECT

INTRODUCTION

The United States Environmental Protection Agency (U.S. EPA) and the Minnesota Pollution Control Agency (MPCA) have agreed to conduct an Enforcement Deferral Pilot Project to demonstrate full accountability for State enforcement-lead Superfund sites without Federal oversight/intervention. This Enforcement Deferral Pilot will gather information that can be used to demonstrate MPCA's capability for State authorization and/or referral. The first year of the pilot is Federal fiscal year 1995, from October 1, 1994 through September 30, 1995.

The State of Minnesota has historically played a significant role in the implementation of the Superfund program within Region V. The MPCA has demonstrated both an interest and a willingness to invest its staff and resources into site cleanup activities. Of the 36 currently active National Priorities List (NPL) sites within the State (43 NPL sites total), MPCA has the lead on 26 NPL sites, which is 72%. Of these 26 sites, 20 are being addressed as State-enforcement leads and 6 are State-lead CERCLA fund financed.

In addition, the MPCA has been active in the implementation of the Minnesota Environmental Response and Liability Act (MERLA) of 1983 to investigate and cleanup releases of hazardous substances, pollutants, or contaminants. The MPCA will administer the Enforcement Deferral Pilot through its authority under MERLA.

ENFORCEMENT DEFERRAL PILOT

Under the Enforcement Deferral Pilot, MPCA will assume full responsibility at the following 13 State-enforcement lead sites.

Agate Lake
Baytown Township ***
General Mills
Joslyn
~~*Koch Refining/N ReN Corp.*~~ (delisted)
Koppers Coke
Kurt Manufacturing
FMC
Nutting Truck and Caster Co.
St. Louis River *
UMRRC
Waite Park Water Supply **
Whittaker
Windom

* *Includes Interlake and USX State sites.*
** *Includes Waite Park Wells, Electric Machinery, and Burlington Northern State sites.*
*** *Baytown Township was added to the pilot after its start. Boise Cascade - Onan & Medtronic were removed from the original pilot sites.*

This assumption of responsibilities includes: utilizing State authorities to investigate and cleanup these sites; conducting the necessary enforcement actions available to the State of Minnesota; and, planning and reporting site progress information to U.S. EPA.

As part of this pilot, U.S. EPA is deferring to the MPCA on site decisions and will no longer oversee MPCA on the designated sites. U.S. EPA will not review technical documents or decision documents, nor concur on any Records of Decision (RODs) or equivalents issued as a result of the pilot. However, U.S. EPA will retain approval/concurrence of 5 year reviews and final site closeout reports for Agate Lake, UMRRC, Waite Park and Windom Municipal Dump because U.S. EPA previously concurred on RODs for these sites. U.S. EPA's role with regard to all of the Enforcement Deferral Pilot sites is to ensure that the selected remedies are protective of human health and the environment and that decisions made by the MPCA are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). U.S. EPA does not plan or anticipate any Federal action under CERCLA as long as these conditions are met.

U.S. EPA has historically awarded funds to MPCA for several of the State-enforcement lead sites. As part of this pilot, U.S. EPA will not provide site specific Cooperative Agreement funds for the Enforcement Deferral Pilot sites.

ADDING AND REMOVING SITES

Additional sites may be added to the Enforcement Deferral Pilot provided they meet the pilot criteria and both Agencies mutually approve of their inclusion.

Sites can be removed from the pilot provided the MPCA has exhausted its enforcement authorities against the site's responsible parties. In addition, a site can be removed from the pilot if both Agencies mutually agree that there is a more efficient/cost effective manner of proceeding towards site cleanup. The MPCA would request U.S. EPA's approval for removing sites from the pilot. These removed sites would be subject to CERCLA authorities.

SCHEDULING AND REPORTING

Scheduled milestones for the 13 Enforcement Deferral Pilot sites have been reviewed and re-targeted by MPCA. These site milestone schedules are in Table 1. MPCA intends to accomplish site activities on or before the targeted dates. Changes to the site schedules will be reflected in semi-annual updates to Table 1 by MPCA. These updates will coincide with the Enforcement Deferral

Pilot reviews conducted at the agencies' mid-year and end-of-year reviews. The CERCLIS database shall be amended to reflect the current Enforcement Deferral Pilot site schedules and any subsequent changes.

Because the CERCLA and MERLA processes are not identical, the two agencies have/will establish equivalents for some of the CERCLA-required milestones. One example is the MPCA will provide U.S. EPA with preliminary close-out reports (PCORs) for those pilot sites where construction has been completed on the last operable unit and a pre-final inspection has been conducted. U.S. EPA understands that PCORs are not required under the provisions of MERLA. Another example is the MPCA will provide U.S. EPA with 5 year reviews for all pilot sites to ensure that the implemented remedy continues to provide adequate protection of human health and the environment, even though U.S. EPA concurrence is not required

As site targets are met, MPCA shall issue an approval letter or document which allows the milestone target to be turned into an actual date. Until MPCA has access to the CERCLIS database, the MPCA pilot contact person shall inform the U.S. EPA pilot contact person of the milestone accomplishment date. When MPCA is granted access to the CERCLIS database, milestone accomplishment dates can be entered by MPCA.

MEASURING THE SUCCESS OF THE PILOT

Since one of the objectives of the Enforcement Deferral Pilot is to gather information that could be used as part of an assessment of capability for authorization and/or referral, an assessment process is essential.

Within 45 days of the end of each Federal fiscal year (September 30th) for which the pilot is conducted, MPCA shall prepare a report which assesses its success in meeting the milestones targeted. The format of the report shall be:

1) Introduction; Statement of Purpose
2) Narrative Highlighting Work Accomplished During the Reporting Period
3) Narrative Highlighting Problems Encountered During the Reporting Period
4) Narrative Highlighting Corrective Measures Taken or Planned
5) Prospective Analysis of Actions Targeted for Next Reporting Period.

The measure of success of the Enforcement Deferral Pilot will be demonstrated in three areas. The first area is the capability of MPCA to meet all or a majority of the targeted milestones on or before the targeted date. This will be depicted in the annual

report with a site-by-site analysis of each target planned for the reporting period. The report will acknowledge the actual date that the milestone is achieved, or analyze the basis of the actual date not being achieved. The second area is the quality of the remedies being implemented. The report will analyze the approval letters or Records of Decision issued. For remedies selected prior to the pilot, the quality of the remedies will be evaluated in MPCA's review and approval of the operation and maintenance report. The third area is the level of community participation. This will be analyzed and reported in the annual report.

The opportunity for dialog between U.S. EPA and MPCA regarding the on-going progress of the pilot exists during the course of the mid-year and end-of-year reviews. These semi-annual reviews shall incorporate the Enforcement Deferral Pilot as a standing item on each meeting agenda.

LENGTH OF THE PILOT

As structured, there are enough controls and measures to assess the success of the Enforcement Deferral Pilot. Annual reports, mid-year and end-of-year reviews provide opportunities to document progress. U.S. EPA will use these opportunities to determine whether or not the pilot will continue. It is, however, U.S. EPA's intention that the Enforcement Deferral Pilot will end once the last pilot site event has been completed. MPCA reserves the right to withdraw from the pilot due to funding/resource constraints.

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William E. Muno
Director
Waste Mangement Division
U.S. EPA

6/20/95

James L. Warner
Division Manager
Groundwater and Solid Waste Division
MPCA

Milestones and Definitions

NA = Not Applicable
NL = Not Listed
NC = No Change
R/FS = Remedial Investigation/Feasibility Study
ST PUB CMT = Start Public Comment Period
ROD = Record of Decision
RD = Remedial Design Completion
PCOR = Preliminary Completion Report documents completion of physical construction for entire site. The PCOR is done between the prefinal inspection and final inspection.
RA = Response Action Completion Report. Documents completion of an operable unit.
FA = five year review starts five years after the responsible party begins substantial and continuous physical action, which is equivalent to an EPA contract award.
Final COR = Final Close Out Report. Documents completion of the entire site, including attaining cleanup levels.

* Milestones are for operable units requiring the longest timeframe for completion. Additional operable units may be identified which will need a longer timeframe (e.g. sediments). Other operable units will be completed sooner.

** The planned completion date for the five year review of the no action decisions in the 1989 ROD is 12/31/95.

TABLE 2

FY 1996 Deferral Pilot Site Milestone Schedule

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
Agate Lake	1	FA		99/4	
		Final COR		00/1	
Baytown Township	1	RI/FS	96/4	98/1	
		Public Comment Period	98/2	98/2	
		ROD	98/2	98/4	
		RD	99/1	00/1	
		RA	00/1	01/3	
		PCOR		01/4	
		FA		05/1	
		Final COR		02/2	
FMC	1	2nd FA		97/4	
		Final COR		97/1	
General Mills		2nd FA		99/4	
		Final COR		06/4	
Loslyn	1 shallow gw	PCOR		96/1	
		FA		96/1	
		Final COR		96/3	
	2 deep gw	FA		96/1	
	3 DNAPL	FA		96/1	
	4 Soil	FA		96/1	
Koppers Coke	1	RD	94/3	95/1	97/2
		RA	95/4	96/1	97/4
		PCOR		98/1	
		FA		01/4	
		Final COR		06/4	
Kurt Manufacturing	1	2nd FA		99/4	01/1
		Final COR		04/4	

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
Nutting Truck & Caster Co	1	2nd FA		99/2	
		Final COR		04/2	
St. Louis River	2 (USX)				
	2a	RI/FS	96/1	96/1	96/2
	Coke Plant	ST PUB CMT	96/3	96/1	96/4
	Settling Basin	ROD or ESD	96/4	96/2	96/4
		RD	96/4	96/2	97/1
		RA	97/1	96/4	97/4
		FA		01/4	02/3
	2b	RI/FS	96/1	95/4	96/2
	Wire Mill	ST PUB CMT	96/3	96/1	96/4
	Pond	ROD or ESD	96/4	96/2	96/4
		RD	96/4	96/2	97/1
		RA	97/1	96/4	97/4
		FA			02/3
	2c	RI/FS	96/2	95/4	96/4
	Contaminated	ST PUB CMT	96/4	96/1	97/1
	Sediments	ROD or ESD	97/1	96/2	97/1
		RD	97/2	96/3	97/2
		RA	97/3	96/4	99/1
		PCOR		97/1	99/1
		FA		01/4	02/3
		Final COR		97/3	99/3
	3(SLRIDT)	RD	96/1	96/2	96/3
	Soil	RA	96/3	97/4	98/1
		FA			01/3
	4(SLRIDT)	RI/FS		98/2	
	Sediment	ST PUB CMT		97/4	
		ROD		98/2	
		RD	98/2	99/1	
		RA	99/1	02/1	
		PCOR			02/2
		FA			03/3
		Final COR			12/2

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
UMRRC	1 Ground water	FA Final COR		97/3	
	2 Lead soil	FA Final COR		97/3	
	3 PCB soil	FA Final COR		97/3 96/3	
Waite Park Water Supply (Electric Machinery) (Burlington Northern)	1(EM) 2(BN)	2nd FA RA PCOR FA Final COR	94/3	99/2 97/4 97/1 99/3 07/4	96/4
Whittaker	1	RA Final COR		96/4 97/4	
Windom	1	2nd FA Final COR		99/2 20/1	

TABLE 1

Deferral Pilot Site Milestone Schedules

Site	Operable Unit	Event	Planned Complete	Revised Complete
Agate Lake	1	FA	9/30/99	NC
		Final COR	10/30/99	NC
Baytown Township	1	RI/FS Completion	12/31/97	
		Public Comment Period Start	3/30/98	
		ROD	6/30/98	
		RD	12/31/99	
		RA	12/31/00	
		PCOR	6/30/01	
		FA	12/31/04	
		Final COR	Unknown	
General Mills*		2nd FA	9/30/99	
		Final COR	NL	
Joslyn	1	PCOR	12/31/95	NC
	shallow	FA	12/31/95	NC
	gw	Final COR	6/30/96	NC
	2	PCOR	12/31/95	NC
	deep	FA	12/31/95	NC
	gw	Final COR	6/30/96	NC
	3	PCOR	12/31/95	NC
	DNAPL	FA	12/31/95	NC
		Final COR	6/30/96	NC
	4	PCOR	12/31/95	NC
	Soil	FA	12/31/95	NC
		Final COR	6/30/96	NC
Koch Refining/N-Ren Corp	1	Delist	NL	
Koppers Coke	1	RD	12/30/94	1/30/97
		PCOR	NL	4/30/97
		RA	12/30/95	7/30/97
		FA	NL	4/21/99
		Final COR	NL	Unknown

Site	Operable Unit	Event	Planned Complete	Revised Complete
Kurt Manufacturing	1	RA	9/30/94	12/31/94
		PCOR	NL	1/30/95
		FA	9/30/99	12/31/99
		Final COR	NL	Unknown
Nutting Truck & Caster Co	1	2nd FA	NL	3/31/99
		Final COR	NL	
St Louis River	2 (USX**)			
	2a	RI/FS	8/31/95	
	Coke Plant	ST PUB CMT	10/30/95	
	Settling Basin	ROD** or ESD	1/31/96	
		RD	2/29/96	
		RA	8/30/96	
		PCOR	9/30/96	
		FA	7/30/01	
		Final COR	Unknown	
	2b	RI/FS	8/30/95	
	Wire Mill	ST PUB CMT	10/30/95	
	Pond	ROD** or ESD	1/31/96	
		RD	3/31/96	
		RA	8/31/96	
		PCOR	9/31/96	
		FA	7/31/01	
		Final COR	Unknown	
	2c	RI/FS	7/31/95	
	Contaminated	ST PUB CMT	10/31/95	
	Sediments	ROD** or ESD	1/31/96	
		RD	4/30/96	
		RA	9/31/96	
		PCOR	10/31/96	
		FA	8/31/01	
		Final COR	Unknown	
	3(SLRIDT)	RI/FS	6/30/95	9/30/95
	Soil	ST PUB CMT	3/31/95	6/30/95
		ROD or ESD	6/30/95	9/30/95
		RD	3/31/96	6/30/96
		RA	9/30/97	12/30/97
		PCOR	NL	12/31/99
		FA	NL	12/31/01
		Final COR	NL	Unknown

Site	Operable Unit	Event	Planned Complete	Revised Complete
St Louis River (con't)	4(SLRIDT	RI/FS	3/31/98	
	Sediment	ST PUB CMT	3/31/97	
		ROD	3/31/98	
		RD	12/31/98	
		RA	12/31/01	
		PCOR	NL	12/31/99
		FA	NL	12/31/03
		Final COR	NL	Unknown
UMERC	1	FA	NL	9/30/95
	Ground water	Final COR	NL	6/30/95
	2	FA	NL	6/12/97
	Lead soil	Final COR	NL	6/30/97
	3	FA	NL	6/12/97
	PCB soil	Final COR	NL	6/30/97
Waite Park Water Supply*	1(EM)	2nd FA	3/30/99	
(Electric Machinery)	2(BN)	RD	9/30/95	9/30/94
(Burlington Northern)		RA	9/30/97	9/30/96
		PCOR	NL	12/30/96
		FA	NL	9/30/99
		Final COR	NL	Unknown
Whitaker	1	RA		9/30/96
		Final COR	NL	9/30/97
Windom	1	2nd FA	1/25/99	NC
		Final COR	NL	Unknown

* Five year review recommendation implementation schedules will be provided in the next scheduled update

** One ROD for all operable units.

TABLE 1A

FY 1998 Deferral Pilot Site Milestone Start Status

Site	Operable Unit	Event	Planned Start	Actual Start
Agate Lake	1	FA		
		Final COR		
Baytown Township		ST PUB CMT		
		ROD		
		RD	99/2	
		RA	00/4	
		PCOR		
		FA		
		Final COR		
FMC	1	2nd FA	98/2*	3/31/98
		Final COR		
General Mills		2nd FA		
		Final COR		
Joslyn	1-4	FA	01/1	
		Final COR		
Koppers Coke	1	RD		
		RA		
		PCOR		
		FA	03/2	
		Final COR		
Kurt Manufacturing	1	2nd FA		
		Final COR		
Nutting Truck & Caster Co	1	2nd FA	98/1*	12/18/97
		Final COR		
St. Louis River	2 (USX)			
	2a	RA		
	Coke Plant	PCOR		
	Settling Basin	FA		

Site	Operable Unit	Event	Planned Start	Actual Start
St. Louis River (con't)	2b Wire Mill Pond	RA PCOR FA	98/1*	12/31/97
	2c Contaminated Sediments	RI/FS ST PUB CMT ROD or ESD RD RA PCOR FA Final COR	98/4* 98/4* 99/1 99/2 99/4 04/4	6/15/98 **
	3(SLRIDT) Soil	FA		
	4(SLRIDT) Sediment	RI/FS ST PUB CMT ROD RD RA PCOR FA Final COR	 99/2 99/4 06/1	
UMRRC	1 - 3	FA Final COR		
Waite Park Water Supply (Electric Machinery) (Burlington Northern)	1(EM) 2(BN)	2nd FA RA PCOR FA Final COR		
Whittaker	1	2nd FA Final COR	98/1* 99/1	12/31/97
Windom	1	2nd FA Final COR		

* FY 1998 Milestones
** Missed Milestones

TABLE 1B

FY 1998 Deferral Pilot Site Milestone Completion Status

Site	Operable Unit	Event	Planned Complete	Revised Complete	Actual Complete
Agate Lake	1	FA	99/4		
		Final COR	00/1		
Baytown Township	1	RI/FS	98/4	99/4	
		ST PUB CMT	98/2	99/4	
		ROD	98/4	99/4	
		RD	00/3	01/3	
		RA	01/4	02/4	
		PCOR	02/1	02/4	
		FA	06/1	07/1	
		Final COR	02/3	03/3	
FMC	1	2nd FA	97/4	98/2*	3/31/98
		Final COR	2020/4		
General Mills		2nd FA	99/4		
		Final COR	06/4		
Joslyn	1- 4	2nd FA	01/1		
		Final COR	96/3	99/1	
Koppers Coke	1				
		RA	96/1	98/2*	3/24/98
		PCOR	98/3*		3/31/98
		FA	01/4		
		Final COR	24/4		
Kurt Manufacturing	1	2nd FA	99/4	01/1	
		Final COR	04/4		
Nutting Truck & Caster Co	1	2nd FA	99/2		
		Final COR	04/2		
St. Louis River	2 (USX) 2a				
	Coke Plant	RA	96/4	98/1*	12/1/97
	Settling Basin	FA	01/4	02/3	

Site	Operable Unit	Event	Planned Complete	Revised Complete	Actual Complete
St. Louis River (con't)	2b				
	Wire Mill	RA	96/4	98/1*	12/6/97
	Pond	FA	96/4	02/3	
	2c	RI/FS	96/4	98/4*	**
	Contaminated	ST PUB CMT	96/1	99/1	
	Sediments	ROD or ESD	96/2	99/1	
		RD	96/3	99/4	
		RA	96/4	00/4	
		PCOR	97/1	01/1	
		FA	01/4	04/4	
		Final COR	97/3	04/4	
	3(SLRIDT)	RA	97/4	98/1*	10/21/97
	Soil	FA		01/3	
	4(SLRIDT)	RI/FS	98/3	99/1	
	Sediment	ST PUB CMT	98/3	98/4*	**
		ROD	98/3	99/1	
		RD	99/3	99/4	
		RA	02/1		
		PCOR		02/2	
		FA		07/1	
		Final COR		28/2	
UMRRC	1 - 3	2nd FA	02/3		
Waite Park Water Supply	1(EM)	2nd FA	00/2		
(Electric Machinery)	2(BN)	RA	97/4	99/4	
(Burlington Northern)		PCOR	97/1	00/1	
		FA	99/3		
		Final COR	07/4	24/4	
Whittaker	1	2nd RA	96/4	98/4*	**
		2nd FA	97/4	98/1*	12/31/97
		Final COR	97/4	99/2	
Windom					
	1	2nd FA	00/2		
		LTRA	20/4		
		Final COR	21/1		

* FY 1998 Milestones
** Missed Milestones

TABLE 2

FY 1999 Deferral Pilot Site Milestone Schedule

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
Agate Lake	1	FA		**99/4***	
		Final COR		00/1	
Baytown Township	1	RI/FS		98/4	**99/4***
		Public Comment Period		98/4	**99/4***
		ROD		98/4	**99/4***
		RD	**99/2***	00/3	01/3
		RA	00/4	01/4	02/4
		PCOR		01/4	02/4
		FA		06/1	07/1
		Final COR		02/3	03/3
FMC	1	3rd FA			
		Final COR		20/4	
General Mills		2nd FA		**99/4***	
		Final COR		06/4	
Joslyn	1 - 4	2nd FA	01/1	01/1	
		Final COR		96/3	**99/1***
Koppers Coke	1	RA			
		PCOR			
		FA	03/2	05/4	
		Final COR		24/4	
Kurt Manufacturing	1	2nd FA		99/4	01/1
		Final COR		04/4	
Nutting Truck & Caster Co		3nd FA	04/1	04/2	
		Final COR		04/2	
St. Louis River	2 (USX) 2a Coke Plant Settling Basin	FA		01/4	02/3

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
St. Louis River (con't)	2b Wire Mill Pond	FA		96/4	02/3
	2c Contaminated Sediments	RI/FS		96/4	99/1*
		ST PUB CMT	99/1*	96/1	99/1*
		ROD or ESD	99/1*	96/2	99/1*
		RD	99/2*	96/3	99/4*
		RA	99/4*	96/4	00/4
		PCOR		97/1	01/1
		FA	04/4	01/4	05/4
		Final COR		97/3	04/4
	3(SLRIDT) Soil	FA			01/3
	4(SLRIDT) Sediment	RI/FS		98/3	99/1*
		ST PUB CMT		98/3	99/1*
		ROD		98/3	99/1*
		RD	99/2*	99/3	99/4*
		RA	99/4*	02/1	
		PCOR			02/2
		FA	06/1		07/1
		Final COR			28/2
UMRRC	1 - 3	2nd FA		02/3	
Waite Park Water Supply (Electric Machinery) (Burlington Northern)	1(EM) 2(BN)	2nd FA		00/2	
		RA		96/4	99/4*
		PCOR		97/1	00/1
		FA		99/3*	
		Final COR		07/4	24/4
Whittaker	1				
		Final COR	99/1*	97/4	99/2*
Windom		2nd FA		99/4*	
		LTRA		20/4	
		Final COR		21/1	

*FY 1999 milestones

MINNESOTA POLLUTION CONTROL AGENCY
520 Lafayette Road North ♦ St. Paul, MN 55155-4194 ♦ Fax 612-296-9707 ♦ MN Toll Free 800-657-3864

FACSIMILE

To Gladys Beardsley

From: Maureen Johnson

Date: May 22, 1999

Company: U.S. EPA

Remediation Unit
North District

Phone:

612-296-7353

Fax Number 312-886-4071

612-296-9707

Number of pages to follow
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←Problems or questions regarding fax? Call (612) 296-7777.

Comments: Re: Nutting. MPCA has been working with the City of Faribault closely as we further investigate the municipal well contamination with a state-funded series of borings and wells in the last two years; each phase is consequent of previous results; we anticipate the results will affect our decisions about Nutting. The investigation is nearing completion and the new team (due to our GOAL 21 reorganization) will be making a decision about further work being required of the potential responsible parties and of Nutting. There are some indications needing confirmation that the plume from Nutting may not be the same as the plume contaminating the municipal wells. This future analysis will determine the type of work that we would require of Nutting. Some of the possibilities were described in the 1998 5-year review, but these may not be appropriate if Nutting is not a PRP for the Faribault municipal well contamination. The attached is the most recent report. Let me know if you also need the attachments.

The remedy decision for Nutting was incorporated into a Consent Order between Nutting and the MPCA in 1987. Attached is 1991 guidance and my memorandum regarding public activities and 5-year reviews.

Hard copy to follow by mail.

DEPARTMENT: POLLUTION CONTROL AGENCY

SF-00006-05 (4/88)

STATE OF MINNESOTA

Office Memorandum

DATE: March 16, 1999

TO: Dale Trippler, project manager
Don Rosowitz, hydrologist
Renee Owens, onsite inspector
Faribault Municipal Well Contamination project file

FROM: Jim Lundy, hydrologist JRL 3/16/99
Policy & Planning Division, MPCA

PHONE: (612) 296-7822

SUBJECT: **1998 Ground Water Investigation, Project Status and Recommendations for Further Work--Faribault Municipal Well Contamination**

This memorandum summarizes investigative activities performed to determine potential source area(s) of trichloroethene (TCE) that occurs in several municipal wells in Faribault, Minnesota. Field work performed during the mid-1980's and the mid 1990's focused on a confirmed contaminant source area identified as the former Nutting facility, however a certain connection between the Nutting plume and the TCE that occurs in the municipal wellfield was not possible. Subsequently, MPCA staff developed a list of four other potential source areas, which were the focus of the recent (1998) investigation.

The primary goals of the 1998 investigation were to: a) evaluate the likelihood that each potential source area is an actual source of TCE seen at the municipal wellfield; and b) evaluate contaminant flow paths such that a plan for removal of TCE exposure to humans can be formed. To accomplish this, twenty boring locations were drilled in the general area southwest of the municipal well field (figure 1), and ground water was sampled at 2-3 depths within the glacial drift/St. Peter aquifer (hereafter, Qd/OSP). Samples were collected at several depths in each boring to maximize the chance of finding the plume.

Some locations drilled were selected based on file records (documents, airphotos, interviews, etc.) , and focused near and immediately downgradient of potential source areas. The remaining borings were drilled in a data gap located generally between the potential source areas and the municipal wells (figure 1). The field notes (orange field books labeled "Faribault Ground Water Book 1" and "Book 2") contain detailed information on the location of each boring.

Because the drinking water contamination occurs in the Prairie du Chien Aquifer (OPDC), ground water sampling of an adequate OPDC monitoring system will eventually be necessary. The strategy of the 1998 investigation was to use expected contamination in the Qd/OSP to cost-effectively find the contaminant source(s); any released separate phase contamination (DNAPL) may have sunk, but would have passed through all overlying zones, fanning out in a trail of contamination which may still be detectable. Classic porous flow hydrogeology accurately predicts flow in sands and sandstones such as Qd/OSP. Later drilling of the fractured OPDC could then be focused toward definite source area(s). Volatile organic compound (VOC) chemical analyses of the samples indicate the concentration of TCE and related compounds at each depth. Various other analyses (dissolved oxygen, nitrate, iron, sulfate, etc.) indicate the hydrogeochemistry of the system, and the likelihood of the occurrence of natural attenuation of VOCs through reductive dechlorination.

MPCA staff or its contractor screened three depths in each location (figure 2): a) a pushprobe boring to water table for soil and ground water samples; b) a pushprobe boring to approximately 30 feet for soil samples (geologic logging) and a ground water sample; and c) a hollow-stem auger boring to the bottom of the OSP for a water sample from that depth. Minnesota Department of Natural Resources (MDNR) staff performed gamma logging at selected deep borings. All sampling points were abandoned immediately after sampling was complete. The Minnesota Department of Health (MDH) analytical

laboratory analyzed the ground water samples. The following sections summarize the results from borings completed at each of the drilling locations shown on the map in figure 1.

Borings B101-B104--Crown Cork and Seal Facility

Investigative Results. Although Crown Cork and Seal currently occupies the property, it was previously owned and operated by another company (McQuay) known to handle large volumes of TCE. The boring locations were selected after review of facility records indicating the presence of a "waste storage" tank along the northern building wall, and an area designated by "waste stored in drums, temporarily" along the eastern building wall. See figure 3. Borings B101 and B103 were drilled in these locations; B102 and B104 were drilled directly downgradient from these locations (probable ground water flow direction was determined from existing data at numerous leaking underground storage tank sites in Faribault, including the Crown Cork and Seal facility). Field work occurred in April 1998.

Boring depths ranged from 28.5 feet (B103 and B104) to 47 feet (B101). Boring B101 was screened in a brown silty clayey unit and had a poor yield; the other borings were screened in sand, with screens set just above the silty clay unit (based on pushprobe refusal).

Ground water samples were collected from the total depth (approximately 25-30 feet deep, except at B101, 36-40 feet) at each of the four locations. In addition, water table samples were collected in the two locations (B103, B104) where no previous investigation results were available. TCE was not present in either of the potential source area borings (B101 deep, B103 shallow and deep), nor in boring B104 (shallow and deep). A previous investigation detected 2.1-8.4 ug/l TCE at the water table near boring B102, however the TCE was not detected in the deep sample collected from boring B102.

Tetrachloroethene (PCE) was detected at the site in concentrations of up to 34 ug/l (MW-1, Nova investigation, 1993). Under appropriate conditions, PCE degrades to TCE naturally in the subsurface.

Interpretation. The uppermost sandy layer is Qd outwash, continuous across the site (and throughout much of investigated Faribault). The brown silty clayey layer encountered in boring B101 is a likely till layer. Although this unit was only drilled in boring B101, pushprobe refusal at a similar depth in the borings B102, B103, and B104 indicates the till is continuous between the drilled portions of the site (but the till layer was not seen at any other site, including K & G, approximately 700 feet to the north; see below). Based on all borings, the till is at least about 17 feet thick (approximate elevation 966 to at least about 949). Geology beneath approximate elevation 949 has not been drilled, however the OPDC likely occurs at an approximate elevation of 932, similar to its observed elevation elsewhere in Faribault.

The low level detection of several petroleum compounds in boring B101 may have been produced by a nearby exhaust fan during sampling; contaminants have most likely not penetrated the till. Based on the poor yield of B101, the till has low permeability, which along with its inferred thickness suggests it is relatively impermeable to dissolved contaminant migration. It would also be expected to be relatively impermeable to downward movement of separate phase product migration. Any released DNAPL would probably move quickly downward through the sands to the top of the till layer, then laterally along the contours of the top of the till layer (survey elevations indicate the top of the till tilts slightly northeast). A dissolved contaminant plume would then develop in the outwash layer, moving with the ground water flow in that unit, traceable upgradient to the source area.

The screened intervals of borings B102, B103, and B104 were such that ground water was sampled from just above the till layer. The measured range of TCE concentrations in this investigation was non-detectable; earlier ground water samples collected as part of the Tanks/Spills investigation contained TCE in concentrations up to 8.4 ug/l. In view of the "skinny plume" behavior common for chlorinated solvents dissolved in ground water, it is possible that a plume occurs between the investigative boring locations.

Borings B201-B204, K & G Mfg. facility

Possible source areas at the K &G facility were identified by file review, examination of airphotos, and site visit. The K &G plant manager confirmed there have been two distinct disposal pits in use during the time this facility has been active. Three water table monitoring wells were drilled and sampled in the middle 1980's near the existing disposal pit, but none were downgradient of the pit. Analytical results in these wells indicated TCE was present at background levels (BDL to 0.40 ug/l).

MPCA's contractor drilled four borings in July 1998; two were located very near the existing and former disposal pits (B203 and B204), and two were located in positions downgradient (northeast) of the first two borings (B201 and B202), with estimated ground water flow direction from existing monitoring wells (see figure 4). The uppermost materials encountered during drilling were poorly graded fine to coarse sands with some gravel, to a depth of at least 35 feet. Auger refusal in each borehole occurred at depths ranging from 56-61 feet.

Ground water purging and sampling was performed by peristaltic pump, except in the deepest sampled intervals, where bailing was necessary due to low yield. Ground water quality in the water table zone was characterized by petroleum compounds at low concentrations (<1 ug/l), TCE from 0.2-8.4 ug/l, and PCE and 111TCA present from trace levels to 2.3 ug/l. The 31-38 foot deep zone was characterized by TCE in concentrations ranging from trace to 1.1 ug/l, 111TCA from trace levels to 8.6 ug/l, and other solvent VOCs in minor amounts (MIBK, 11DCA). Petroleum compounds were also present in boring B204 (toluene, <1 ug/l; xylene 4.8-12 ug/l). TCE was not detected in ground water from the deepest zone, although petroleum compounds (xylenes, toluene), 111TCA and MEK were all present in minor amounts.

Interpretation. The geology beneath the site consists of Qd glacial outwash underlain by bedrock. There was no evidence of the brown till layer seen at the Crown Cork and Seal facility. The Qd beneath the K &G facility extends to a depth of approximately 35-40 feet, and is underlain by OSP. The presence of fine gray sand in the purge water of boring B203 (deep) indicates the probable presence of the shaley beds of the lower OSP. The lower OSP is probably continuous beneath the site (as indicated by poor yields from these wells), although cuttings were not collected at a depth to confirm this. All four borings ended at the inferred top of the OPDC.

The company insists that chemicals were never put into the pits. The occurrence of solvents at the water table and at 31-38 feet is inconsistent with the company's position, although these detections could represent VOCs originating upgradient of K & G. The petroleum compounds are present in concentrations below that which would cause concern. MIBK and 111TCA do not occur in the municipal well system and therefore are not of primary concern in this investigation.

After the investigation was complete, I discovered that the southeastern portion of the K & G property was formerly the waste storage area, and its exact location is evident on the 1979 airphoto. This area was not a part of the investigation. Because a leaky waste storage area could have been a contaminant source, further proposed investigation should address this area.

Boring B701-B702, Mercury Minnesota

Mercury Minnesota claims never to have used TCE in its process, but has been included in this investigation primarily because TCE was found in water table and OPDC sample water. The drilling locations for this investigation were selected as follows: B701 was drilled close to the area where previous water table monitoring wells drilled as part of a leaking tank investigation discovered trace amounts of TCE; B702 was located adjacent to former MPCA OPDC monitoring well MW-1(now abandoned), in the eastern portion of Mercury of Minnesota property. The boring locations are indicated on figure 1.

Boring B701 encountered poorly graded medium to coarse sands to a depth of 19 feet. The pushprobe was advanced to refusal at approximately 21 feet, and retrieved a core of white fine grained sandstone. Auger refusal occurred at a depth of 36 feet. Boring B702 encountered fine to medium poorly graded sands with some gravels to a depth of at least 21 feet. A core retrieved from a depth of 24-26 feet contained white

sandstone. Hollow stem augers were advanced to 32 feet. Ground water contaminants detected included TCE (0.5-7.9 ug/l), PCE (0.2-7.0 ug/l), cis 12DCE (0.3-3.8 ug/l), and 11DCA (0.5 -12 ug/l).

Interpretation. The site geology is similar to the sites described above. The site is closer to the Cannon River than the others, and the surface elevation is somewhat lower, with a decrease in the bedrock depth. The sandy zone is Qd glacial outwash, with a thickness of 21 feet near Hulet Avenue (B701), and 21-24 feet at the eastern end of the property (B702). The OSP is present beneath the Qd to a depth of 36 feet, where the inferred top of the OPDC was encountered in boring B701.

The screened interval of boring B701 was 32-34 feet, and the temporary well built in the boring had a very low yield. Upon removal, the screen contained greenish light brown sand indicative of the basal shaley beds of the lower OSP. The well installed at boring B702 was screened slightly higher (29.5-32 feet), and purging by peristaltic pump was possible. It is therefore likely that boring B702 was screened above the basal OSP shaley beds, inferred to be present at a depth of about 31-36 feet.

The ground water chemistry of borings B701 and B702 indicates that TCE and other chlorinated volatiles are present in most samples at relatively low concentrations; the exception is the water table sample from boring B702, in which PCE was detected at the HRL (7 ug/l). This boring is located only 500 feet from CW-4. Neither the distribution of PCE nor the ground water flow direction in this location are known. The presence of PCE in the ground water at this location is not consistent with Mercury Minnesota's documentation indicating that PCE is not used at the facility.

Borings B301, B401, B501, B601 and the B80X series

The remaining borings were drilled in the portion of Faribault located between the possible source areas described above and the municipal well field (figure 1), as follows:

- B301 was located at the northeast corner of Lincoln Park, corner of 7th Street NW and Lincoln Avenue, adjacent to former OPDC monitoring well MW-2;
- B401 was located on 8th Street where it dead ends on the west side of the railroad tracks;
- B501 was located immediately west of municipal well #4;
- B601 was located in an alley north of 7th Street NW, just east of Hulet Avenue;
- B801 was located at the southeast corner of Lincoln School, at the corner of George Street and Lincoln Avenue;
- B802, B803, B804, B805, and B806 were drilled to be better define the contaminants identified at boring B801.

The geology encountered in these borings was similar to that encountered in the other borings. The sandy zone was present in thicknesses up to approximately 38 feet, underlain by sandstone, and auger refusal at depths of 38 to 47 feet.

Ground water samples collected from these borings contained varying concentrations of numerous VOCs, including: PCE; toluene, 111 TCA, TCE, xylenes, benzene, 11DCA, cis12DCE, ethylbenzene, and others. For the complete list of chemicals detected and associated concentrations, see attached table ("Summary of Chemical Results").

Interpretation.

The results from boring B801 confirm that at least part of the plume reaching the city wellfield originates southwest of the wellfield. The water table sample contained PCE at 33 ug/l and TCE just above the detection limit, but the TCE concentration at depth was 590 ug/l (with PCE just above detection). These conditions are indicative of a dissolved solvent plume, perhaps even near the axis of the plume, and are consistent with geochemical results of natural attenuation parameters indicating reductive dechlorination occurs at depth. Subsequent borings drilled as a result of this finding (B802-B806) indicate a northeastward migrating VOC plume, the flanks of which are defined approximately by borings B803 and B805, and the axis of which is defined approximately by borings B801 and B804 (figure 5).

The data indicate that at least a portion of the TCE plume reaching the city wellfield actually originates as a PCE plume upgradient (southwest) of borings B801 and B804. No PCE usage is documented by either Nutting, Crown Cork and Seal, McQuay nor K & G, however all but Crown used TCE for parts washing and other similar activities, and it is not inconceivable that PCE was occasionally substituted for TCE.

Hydrogeology favors plume origin from the vicinity of Crown/McQuay or K & G, but not Nutting. Ground water elevations indicate generally northeasterly flow towards the wellfield, consistent with a ground water flow model for the city submitted to the MDH wellhead protection program. Neither is consistent with plume origin at Nutting. A Qd/OSP pumpout system operating at Nutting since the 1980s intercepts TCE migrating from that site, and no TCE plume in the OPDC has been found in connection with Nutting. In addition, the consultant for Nutting indicated that PCE has never been detected at that site.

Discussion.
The ground water investigation results allow several conclusions to be drawn on the following issues: source areas; contaminant transport; natural attenuation; screening criteria; remediation of the VOC plume(s) vs. removal of exposure.

Source areas. Most borings did not encounter a distinct VOC plume, and none defined a definite source area. However boring B801 intersected a VOC plume very near its probable axis. Subsequent borings B802-B806 further defined the shape of the plume. The apparent northeasterly plume migration is consistent with approximate ground water flow directions measured at nearby petroleum investigation sites, and suggests a plume source southwesterly along a line defined approximately by borings B801 and B804. The properties currently occupied by Crown Cork and Seal and K & G Manufacturing are located in the apparent upgradient direction and may be source areas of the plume.

Analytical results from boring B702 indicate a probable PCE/TCE source area near this location on the Mercury Minnesota property. There are no known activities near this location consistent with a PCE/TCE source, however abandoned barrels and pits possibly used for waste disposal are present at the nearby CMC-Heartland property (directly east; downgradient of B702, very near CW-4).

Results measured at boring B701 and former monitoring well MW-1 may indicate the presence of a VOC source area upgradient (west) of Mercury Minnesota.

This investigation did not determine whether the Nutting site has contributed TCE to the plume seen at the municipal wells, although it seems unlikely that the known Nutting TCE plume in the Q/OSP causes the plume seen at borings B801 and B804 (based on apparent ground water flow directions and chemistry, and the presence of the pumpout system). This investigation did not evaluate ground water chemistry in the OPDC, and therefore gives no information on whether the Nutting TCE plume has affected the OPDC.

Contaminant transport. No exact VOC source area has been identified, so the following description of contaminant transport pathways is general. A conceptual cross-section of the contaminant plume is shown in figure 6. The detected VOC plume is in the dissolved phase, and moves advectively through the Qd under a slightly downward northeasterly gradient. Approaching the drawdown cone of the pumping municipal wells, its pathway steepens through the Qd and into the OSP.

The presence of highly contaminated water in the OSP shaley beds (B801) indicates significant downward leakage through the shale; high leakage rates may be present only where the drawdown cone of the municipal wellfield provides a strong downward gradient. Common zones of lost circulation during drilling of many borings at this depth in this area may indicate an uppermost OPDC zone where rapid lateral contaminant transport occurs, particularly close to the municipal wellfield.

The brown till beneath Crown Cork and Seal, while observed at B101 and assumed continuous across the property, is not present at K & G (approximately 700 feet north of Crown), or at any other drilled location. The till is expected to be relatively impermeable to dense, separate phase liquids (DNAPLs), although none

have been observed during this investigation. DNAPL material, if present, would likely have migrated to the outwash/till contact, then along this surface under gravity flow until falling off the edge of the till into the outwash. The till topography is probably essentially flat, tilting slightly northeastward.

Natural attenuation. Measurements designed to evaluate the likelihood of natural attenuation indicated the presence of aerobic conditions at the water table, with increasingly reducing conditions at depth. Chlorinated compounds such as PCE would not dechlorinate in the aerobic zone, but would with depth. The VOC chemistry of the ground water is consistent with this scenario (very low PCE detections with depth, increased TCE detections with depth; some detections of cis-12DCE and vinyl chloride), suggesting that natural attenuation of PCE and TCE does occur.

However, in the OPDC, lateral transport is apparently dominant over natural attenuation, because TCE appears very near CW-4 (MW-1; MW-502) and in CW-4. Therefore natural attenuation is not an adequate remedy in this hydrogeologic setting.

Screening criteria. Screening criteria guide the need for further investigation, and serve as potential cleanup goals for the site. Screening criteria for the compounds of concern are presented below. The compounds of concern are PCE, TCE, c-12DCE, and vinyl chloride (VC). The screening values are based on the MDH Health Risk Limits (HRLs; state drinking water criteria), and the Maximum Contaminant Limits (MCLs; federal drinking water standards, which are applicable to municipal drinking water wells).

Compound	HRL (ug/l)	MCL (ug/l)
PCE	7	5
TCE	30	5
cis-12DCE	70	70
VC	0.2	2

Remediation versus removal of TCE exposure

Investigation and previous data show that the VOC plume is extensive in both the Q/OSP and the OPDC. This fact, coupled with expected difficulties remediating a fractured carbonate aquifer, suggest that ground water remediation would not be effective. The documented occurrence of TCE in the municipal drinking water wells since the early 1980s suggest that a pump/treat remedial approach would be long-term to very long-term, and therefore very costly. Other approaches would be of uncertain effectiveness, and perhaps similarly costly.

Therefore removal of human exposure to VOCs will depend not upon remediation, but upon deactivating and/or rebuilding the city wells. Rebuilding the city wells such that they draw water from a single aquifer (Jordan) will depend upon the presence of a laterally continuous confining layer between the Shakopee Formation and the Jordan to ensure the contaminant plume is not pumped downward to the Jordan Aquifer by the newly rebuilt wells. In some locations of southeastern Minnesota, such a confining layer is present, but extrapolation to Faribault is risky with no test data.

Further work needed:

On the basis of this and previous investigations, two major items remain to be evaluated: 1) continue to define probable source areas; and 2) evaluate the proper actions to remove exposure to TCE at the wellhead.

Define source areas. The primary potential source areas are properties currently occupied by Crown Cork and Seal and K & G Manufacturing. Secondary potential source areas are upgradient (west) of Mercury Minnesota, the area near boring B702/MW-1 at Mercury Minnesota, and the CMC-Heartland property. MPCA position with regard to the Nutting TCE source area is not addressed in this memorandum.

The primary potential source areas should be investigated again by pushprobe. Borings are to be located as follows: a) at Crown, borings will be located at approximate 50 foot intervals along the northern and

eastern building walls to determine whether a VOC plume is migrating from beneath the building, and to determine the northern extent of the till; and b) at K & G, borings will be located at 50 foot intervals along the western curbline of Park Avenue (city property). The water table and a deeper interval will be sampled in each location for VOCs and natural attenuation parameters. Ground water elevations will also be measured to determine ground water flow direction.

Investigation of the secondary source areas may be performed at a future time.

Removal of TCE exposure. If CW-4 and the other municipal wells are to be rebuilt as Jordan Aquifer wells, we must first be sure that this configuration will not pump contaminated ground water from the Shakopee across the Oneota formation to the Jordan. Monitoring wells MW-502 (Shakopee) and MW-503 (Jordan) were recently completed within 50 feet of CW-4, and a water table monitoring well (MW-504) will also be installed soon. The anticipated tests listed below will help determine the hydrogeologic feasibility of rebuilding the city's drinking water wells (the engineering is to be evaluated by others):

- water level measurements to determine vertical gradients between the Shakopee and Jordan under pumping and non-pumping conditions (CW-4);
- chemical testing to determine vertical distribution of VOCs in the Shakopee and Jordan near the wellhead;
- testing provided by the United States Geological Survey (USGS) to profile flow and hydraulic conductivity in MW-502. This will help determine the exact depth within the Shakopee formation that produces the contaminated water that eventually appears in CW-4. Casing off the contaminated interval will be an integral step in rebuilding the city wells (if this plan proceeds). This test is anticipated for March or April 1999;
- aquifer pumping test to determine hydraulic connection between the Shakopee and Jordan. The test will be arranged in consultation with the MDH SAC and wellhead protection programs, and will be designed to measure response in MW-502, MW-503 and MW-504 while pumping CW-4 over a minimum 24 hour period.

If there are any questions about this memorandum, I can be reached at the telephone number on the first page, or at <jim.lundy@pca.state.mn.us>

I hereby certify that this document was prepared by me (or under my direct supervision) and I am duly certified as a Professional Hydrogeologist under the Rules and Regulations of the American Institute of Hydrology.

Print Name: James R. Lundy
Date: 3/16/99

Signature: James R. Lundy
License: #1485

EPA Regions should reflect plans to conduct five-year reviews in their annual Superfund Comprehensive Accomplishment Plan (SCAP) or other appropriate strategic planning and budgeting system. The fiscal year 1992 Program Management Manual and other planning documents will address the level of activity associated with such reviews. The Regions must also capture the site-specific costs associated with five-year reviews and reflect them in the Software Package for Unique Reports (SPUR) or other Regional cost summaries.

G. Public Participation

EPA will inform the public when it determines that either a Statutory or Policy five-year review is appropriate, describe the planned scope of such reviews, identify the location of the report on the review (see section V below), and describe actions taken based on any review.

Beginning in fiscal year 1990, each ROD attempts to identify whether a statutory or policy five-year review is appropriate for the site based on the nature of the remedy. A discussion of the five-year reviews in subsequent proposed plans will afford the public an opportunity for comment on whether a five-year review is appropriate for the remedy and the general scope and timing of such reviews. In conducting reviews, EPA Regions should inform local communities of pending reviews and consult with the community in developing a communication strategy. As stated below, the Five-Year Review Report should be made available to the public through the administrative record file.

H. Level of Review

EPA contemplates that a Level I analysis will be appropriate in all but a relatively few cases where site-specific circumstances suggest another level either at the outset of the review, or if findings during the course of the review indicate the need for further analysis.

EPA will determine the level of the review based on site-specific considerations, including the nature of the response action, the status of on-site response activities, proximity to populated areas and sensitive environmental areas, and the interval since the last review was conducted. Level I is the lowest level of evaluation of protectiveness, Level II is the intermediate level, and Level III is the highest level of evaluation of protectiveness. EPA contemplates that a Level I analysis will be appropriate in all but a relatively few cases where site-specific circumstances suggest another level. A Level II review would be appropriate only if warranted by site conditions. For example, the absence of expected change in the level of contaminants, as monitored, might suggest additional

Moemorandum to the file

Maureen Johnson
December 5, 1994

Meeting with Miriam Horneff regarding 5-year reviews and public participation.

I inquired about compliance with the public participation aspect of 5-year reviews (Attachment I, III. G. Public Participation, of OSWER Directive 9555.7-02). I noted that it wasn't clear to me at what point the RP and the public should receive a copy, draft or final.

Miriam explained that the federal Office of the Inspector General has prompted EPA to provide only the final report to the public and the RPs for comment. This policy arose out of the concern that the opportunity for coercion be minimized.

I note upon further review of the above document that public comment is solicited at the time of proposed plans as to whether the 5-year-review is appropriate, and that the final report should be made available to the public through the administrative record. V. says that EPA will notify communities of on-site review activities (inspection), actions proposed on the basis of the review, and the location of the administrative record file.

Site Name: NUTTING TRUCK & CASTER CO
RPM Name: GLADYS BEARD
RPM Section: Remedial Response Section 2 (Indiana) Sypniewski
Attorney Name:
Attorney Section:
Site ID: 0503705
EPA ID: MND006154O1
State: MN

OU	
00	SITEWIDE
01	WHOLE SITE CLEANUP

Site Summary Information / Project Schedule

OU	Action Name	Seq	Lead	Planned Start	Planned Complete	Plan Comp FYQ	Actual Start	Actual Complete	Worksheet Start	Worksheet Complete	Action Status
00	PROPOSAL TO NPL	001	F					09/08/1983			Submitted
00	DELETION FROM NPL	001	F	09/30/2005	09/30/2006	2006/4					Submitted
00	REMOVAL ASSESSMENT	003	F				04/15/1992	07/20/1992			Submitted
00	REMOVAL ASSESSMENT	002	F				04/18/1990	07/12/1990			Submitted
00	REMOVAL ASSESSMENT	001	F				11/22/1989	11/29/1989			Submitted
00	NPL RP SEARCH	001	FE					09/30/1984			Submitted
01	PRP RD	001	PS				11/30/1986	11/30/1987			Submitted
01	PRP RA	001	PS		09/30/1992	1992/4	11/30/1987	09/24/1992			Submitted
01	Close Out Report	001	PS		03/31/2004	2004/2					Submitted
01	Prelim Close-Out Rep Prepared	001	PS					09/24/1992			Submitted
01	PRP LR	001	PS	09/30/1992	03/31/2004	2004/2	09/24/1992				Submitted
01	FIVE YEAR REMEDY ASSESSME	001	EP		03/31/1994	1994/2	11/10/1993	03/29/1994			Submitted
01	FIVE YEAR REMEDY ASSESSME	002	PS	12/31/1997	03/31/1998	1998/2	12/18/1997	03/31/1998			Submitted
01	FIVE YEAR REMEDY ASSESSME	003	SN	12/31/2003	03/31/2004	2004/2					Submitted
00	FINAL LISTING ON NPL	001	F					09/21/1984			Submitted

MINNESOTA POLLUTION CONTROL AGENCY
ENFORCEMENT DEFERRAL PILOT PROJECT

INTRODUCTION

The United States Environmental Protection Agency (U.S. EPA) and the Minnesota Pollution Control Agency (MPCA) have agreed to conduct an Enforcement Deferral Pilot Project to demonstrate full accountability for State enforcement-lead Superfund sites without Federal oversight/intervention. This Enforcement Deferral Pilot will gather information that can be used to demonstrate MPCA's capability for State authorization and/or referral. The first year of the pilot is Federal fiscal year 1995, from October 1, 1994 through September 30, 1995.

The State of Minnesota has historically played a significant role in the implementation of the Superfund program within Region V. The MPCA has demonstrated both an interest and a willingness to invest its staff and resources into site cleanup activities. Of the 36 currently active National Priorities List (NPL) sites within the State (43 NPL sites total), MPCA has the lead on 26 NPL sites, which is 72%. Of these 26 sites, 20 are being addressed as State-enforcement leads and 6 are State-lead CERCLA fund financed.

In addition, the MPCA has been active in the implementation of the Minnesota Environmental Response and Liability Act (MERLA) of 1983 to investigate and cleanup releases of hazardous substances, pollutants, or contaminants. The MPCA will administer the Enforcement Deferral Pilot through its authority under MERLA.

ENFORCEMENT DEFERRAL PILOT

Under the Enforcement Deferral Pilot, MPCA will assume full responsibility at the following 13 State-enforcement lead sites.

~~Agate Lake~~ delisted
Baytown Township ***
General Mills LTRA
Joslyn LTRA
~~*Koch Refining/N ReN Corp.* (delisted)~~
Koppers Coke mothballed
Kurt Manufacturing LTRA
EMC LTRA
Nutting Truck and Caster Co. LTRA
St. Louis River *
UMRRC LTRA
Waite Park Water Supply ** LTRA
~~*Whittaker*~~ delisted
~~*Windom*~~ delisted

* *Includes Interlake and USX State sites.*
** *Includes Waite Park Wells, Electric Machinery, and Burlington Northern State sites.*
*** *Baytown Township was added to the pilot after its start. Boise Cascade - Onan & Medtronic were removed from the original pilot sites.*

ENFORCEMENT DEFERRAL PILOT

In June 1995, MPCA and EPA Region 5 signed an agreement whereby the state has assumed full responsibility for 13 state enforcement sites on the NPL, with no federal funding, oversight or intervention. This pilot was developed to demonstrate MPCA's capability to implement CERCLA under some type of delegation. MPCA uses its state legal authority to investigate and cleanup the sites and EPA is not reviewing technical documents, nor concurring on remedy decisions. EPA does not anticipate any federal action as long as the state's remedies are protective of human health and the environment and decisions are not inconsistent with CERCLA and the NCP. For this pilot, MPCA has access to WasteLAN and RP2M, and state staff are entering data on the pilot sites in compliance with federal requirements for data entry, source documentation, internal controls, etc. As of March 1997, MPCA has signed one ROD for a pilot site (St. Louis River soils OU), completed two PCORs (Kurt Mfg. and Joslyn), one FCOR (UMRRC) and one five- year review (Joslyn). One site (Koch Refining) was delisted from the NPL.

LANDFILL CLEANUP PROGRAM

In May 1994, Minnesota initiated a long-term program to cleanup mixed, municipal solid waste landfills. Ten NPL sites are among the 100+ landfills no longer accepting waste that are eligible for the program. The program was intended as an alternative to the Superfund approach to identifying responsible parties, that led to expensive, protracted legal actions among large numbers of PRPs at several NPL sites. The law established a dedicated source of funds to enable MPCA to pay for cleanups at qualified landfills and to reimburse parties who have spent money on landfill cleanup, provided they promise not to sue others to recover their costs. For the 10 NPL sites, EPA agreed to terminate the federal cleanup orders and propose the sites for deletion from the NPL, once MPCA took over responsibility for O&M and future response actions. Region 5 signed an agreement with MPCA that resolves all outstanding EPA cost recovery claims and calls for the state to reimburse EPA for $4 million of the costs that EPA incurred at the landfills. As of March 1997, EPA has terminated CERCLA 106 orders on each of the 4 NPL sites where EPA had orders in place and has issued notices of deletion from the NPL for 8 of the landfills. To date, MPCA has submitted 2 annual payments to EPA totalling $1781 million as reimbursement of past CERCLA costs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 3 1995

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Transmittal of the "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Directive 9375.6-11)

FROM: Stephen D. Luftig, Acting Director
Office of Emergency and Remedial Response

Steve Luftig

TO: Director, Waste Management Division
Regions I, IV, V, VII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI, VIII, IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII

PURPOSE

This memorandum transmits the Environmental Protection Agency's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions."

BACKGROUND

Based on the Environmental Protection Agency's (EPA) June 23, 1993, "Superfund Administrative Improvements Final Report" (OSWER Directive 9200.0-14-2), EPA established an initiative to "Enhance State Role." To implement this initiative, EPA established a work group in August 1993 to develop the deferral guidance, and has worked with several States to pilot the deferral concept at selected sites prior to issuing final guidance. The work group includes representatives from all EPA Regions, as well as representatives from several Headquarters Offices. Additionally, several States, participating in the deferral pilot effort as co-implementors of the deferral program, have offered their input to the work group.

The guidance also includes an appendix, presented in a "question and answer" format, that responds to several questions that arose during development of the guidance. A second appendix provides instructions regarding the use of CERCLIS and other codes to allow for the tracking of deferral activities and cooperative agreements.

DISCUSSION

Components

The deferral guidance provides a framework for Regions, States, and Federally-recognized Tribes to determine the most appropriate, effective, and efficient means to address more sites more quickly than EPA otherwise would address them. The Agency also recognizes that several States already have fully developed cleanup programs in place, while others are continuing to strengthen their capabilities. Therefore, EPA expects to implement the guidance in a flexible manner to account for differing capabilities of participating States and Tribes. As a result of site-specific circumstances or differing but equally effective State or Tribal program practices, Regions may choose to act at variance from certain provisions of the guidance. Under the deferral program:

- Deferral may be implemented on either an area-wide or site-specific basis;
- Response actions will be conducted under State or Tribal authority;
- Viable and cooperative PRPs will agree to pay for and conduct response actions--Superfund Trust funds generally will not be made available for conducting response actions;
- Response actions must be protective of human health and the environment and meet State or Tribal and Federal applicable requirements;
- A site may not be deferred if the affected community has significant, valid objections;
- The level of EPA oversight of States and Tribes will be negotiated with the Region; and
- Once a deferral response is complete, EPA will remove the site from CERCLIS and will not consider the site for the NPL unless the Agency receives new information of a release or potential release that poses a significant threat to human health or the environment.

Changes Based On Comments

In March 1994, a draft guidance was circulated to Regions and Headquarters Offices for concurrence. Based on comments received as well as subsequent work group efforts, several substantive changes were made to the guidance. A final draft of the guidance was distributed to the States in February 1995, and a number of additional changes have been made based on new insights contributed by States and Regions.

- The guidance conforms with the Agency's recognition that pilot projects currently underway are at various stages in the listing process;

- Regions should notify Headquarters before deferring a site for which an HRS package has been initiated (notification before deferring any site is not required);

- States and Tribes should inform affected communities of a proposed deferral 30 days prior to requesting deferral from the Region, seek community affirmation for the deferral, and document their interactions with communities;

- Regions and States or Tribes should agree to a six month timeframe (with an extension of up to a year) to conduct PRP negotiations and should agree to schedules for conducting response actions at each site;

- States may use removal resources at deferred sites where PRPs become recalcitrant or bankrupt.

- Deferral sites at which cleanups are successfully completed will be removed from CERCLIS.

Main Work Group Issues

The changes to the guidance do not reflect work group consensus; they represent a compromise among different views that works to maintain the balance between program flexibility and accountability. Work group members raised concerns about several aspects of the guidance, the most significant of which are discussed below.

- **Comment:** The deferral option should be available for final NPL sites as well as non-NPL sites.

  Response: The purpose of the deferral program is to address sites more quickly than would otherwise be addressed--sites for which an HRS package has been initiated have already entered the response process. Under the deferral program, EPA encourages PRPs to settle earlier to avoid NPL listing,

which results in more sites being addressed more quickly. Final NPL sites must be addressed under the Agency's deletion policy.

- **Comment:** EPA oversight and reporting requirements may discourage the participation of States and Tribes who already have strong cleanup programs and would find these requirements unnecessary.

  Response: The deferral guidance is meant to be flexible to accommodate a wide range of oversight and reporting conditions, and still provide a minimal level of information to maintain accountability. For most States, the negotiated level of EPA oversight will provide incentive to PRPs to be cooperative as well as give the PRPs some comfort that EPA has confidence in State responses.

- **Comment:** States and Tribes will not have an interest in the deferral program without having access to Superfund resources to conduct response actions; thus such resources should be made available.

  Response: A fundamental expectation of the deferral program is that viable and cooperative PRPs will pay for and conduct response actions. Sites that require the use of Superfund resources to conduct response actions are not appropriate candidates for this program. However, at deferral sites where PRPs become recalcitrant or bankrupt, removal cooperative agreements may be awarded, as appropriate, to conclude a response action.

- **Comment:** Although community involvement should be an important factor in deciding to initiate and implement deferrals, this factor may become an overriding determinant and impede implementation of the program.

  Response: EPA is working continually to strengthen its commitment to inform and involve the public in decisions regarding hazardous waste cleanup. Response actions will not be effective, efficient, or fair if community interests are not represented. EPA's intention to encourage public involvement is in no way lessened at sites that are deferred to States. If an affected community expresses significant, valid objections to deferral or the deferral process at any site, EPA will take appropriate action, including rejecting a deferral proposal or terminating a deferral that is underway.

Through these and numerous additional comments, work group members and others have suggested that specific components of the guidance are overly-prescriptive. However, while this guidance presents EPA's view of the national program, we reemphasize our

intent that a flexible approach be taken in implementing the deferral program. Consequently, although the Agency has declined to make certain changes recommended by Regions and States, we recognize the Regions' need to vary from the guidance, as the occasion warrants, in order to best serve the public and the environment.

ACTION

The deferral program is an excellent administrative mechanism to enable States and Tribes, under their own laws, to respond at sites that EPA would otherwise not soon address. Under this program, the Agency anticipates that responses may be quick and efficient, yet still protective of the environment and of communities' rights to participate in the decision-making process. PRPs who are willing to do cleanups also will benefit from reduced response costs and fewer layers of government oversight. I encourage you to support and assist the States and Tribes in your Regions to take opportunities to enter into deferral agreements with EPA. Furthermore, Regional Decision Teams and other Regional assessment teams should work together with States and Tribes to identify these opportunities as part of the site prioritization process, rather than wait until after site assessment has commenced.

If you would like further information regarding implementation of the deferral program, contact Steve Caldwell, Acting Chief of the Site Assessment Branch, Hazardous Site Evaluation Division (703-603-8850), or Murray Newton, Chief of the State and Local Coordination Branch, Hazardous Site Control Division (703-603-8840).

Attachment

OSWER Directive 9375.6-11
EPA/540/F-95/002
PB95-963223

GUIDANCE ON DEFERRAL OF NPL LISTING DETERMINATIONS WHILE STATES OVERSEE RESPONSE ACTIONS

Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Washington, D.C. 20460

The policies set forth in this directive are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this directive, or to act at variance with the directive, on the basis of an analysis of specific circumstances. The Agency also reserves the right to change this directive at any time without public notice.

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GUIDANCE ON DEFERRAL OF NPL LISTING DETERMINATIONS WHILE STATES OVERSEE RESPONSE ACTIONS

PURPOSE

This directive provides guidance on the Environmental Protection Agency's (EPA) Superfund State and Tribal deferral program, under which EPA may defer consideration of certain sites for listing on the National Priorities List (NPL), while interested States, Territories, Commonwealths, or Federally-recognized Indian Tribes compel and oversee response actions conducted and funded by potentially responsible parties (PRPs). Once the necessary response actions at a site are completed successfully, the site will be removed from the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), and EPA will have no further interest in considering the site for listing on the NPL, unless it receives new information of a release or potential release that poses a significant threat to human health or the environment.

INTRODUCTION

The "Superfund Administrative Improvements, Final Report" of June 23, 1993 (OSWER Directive 9200.0-14-2), identified numerous initiatives to improve the Agency's implementation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The deferral program, developed under the initiative to "Enhance State Role," was intended to "encourage qualified, interested States to address, under State laws, the large number of sites now in EPA's listing queue, thereby accelerating cleanup, minimizing the risk of duplicative State/Federal efforts, and offering PRPs a measure of confidence that only one agency will address the site." Although the primary goal of the deferral program is to accelerate the rate of response actions by encouraging a greater State or Tribal role, the priority for increasing this rate must be balanced with two other crucial Agency priorities: 1) maintaining protective cleanup levels at sites, and 2) ensuring that the public's right to participate in the decision-making process is well supported.

This directive is divided into sections that address: criteria that a State, Territory, Commonwealth, or Federally-recognized Indian Tribe (hereafter the term "State" also includes Territories, Commonwealths, and Tribes) should meet to participate in the program; criteria for determining which sites are eligible for deferral; procedural requirements; and provisions for site cleanup levels to be achieved at deferred sites, oversight, financial assistance, community participation, and response action completion or termination. Although these provisions establish a framework for a national deferral program,

EPA recognizes that State cleanup programs have differing capabilities and methods of implementation. To best accommodate these differences and achieve response actions most quickly and effectively, the Agency expects to implement the provisions of the guidance in a flexible manner. Regional implementation of this guidance may vary based on site-specific circumstances or the established capabilities and practices of a State program.

This guidance also includes two appendices. Appendix A responds to several questions that arose during development of the guidance and is presented in a "question and answer" format. Appendix B provides specific instructions regarding the use of CERCLIS and other codes to allow for the tracking of deferral activities and cooperative agreements. Throughout this guidance and its appendices, the terms "State deferral" and "deferring to a State" are defined as EPA's deferring consideration of a site for NPL listing in favor of State action.

IMPLEMENTATION

1. Criteria for a State Deferral Program

A State may participate in the deferral program on an area-wide or site-specific basis. Under the area-wide program, the State and Region will agree to certain generic procedural and other requirements (e.g., roles and responsibilities, cleanup levels, public participation), and address site-specific concerns (e.g., site eligibility and selection requirements, response schedules, EPA oversight) through separate documentation. Under the site-specific approach, the State and Region will negotiate separate terms and conditions for the deferral of individual sites (see below). A State hazardous waste management or remedial program should meet the following general criteria regarding statutory and administrative authority and program capability to participate in the area-wide deferral program.[1]

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[1] **State-Funded Response.** Alternatively, the State may propose to conduct the response actions at a deferred site using its own funds. In these cases, the State additionally will need to demonstrate that it has the technical capability and sufficient resources to conduct and complete the response. If the State desires to use CERCLA section 107 authority, rather than its own authorities, to recover response action costs, the costs incurred, in order to be recoverable, must not be inconsistent with National Oil and Hazardous Substances Pollution Contingency Plan (NCP) requirements.

a. **Statutory, Regulatory, or Administrative Provisions.** The State program should have statutory, regulatory, or administrative provisions which ensure that remedies at deferred sites are protective of human health and the environment. The program also should have the statutory authority and administrative provisions to pursue all necessary enforcement actions at a site, ranging from mechanisms to identify viable liable parties, to authority to compel PRPs to conduct "CERCLA-protective cleanups" (as defined in Section III). The evaluation of these provisions and authorities is not limited to comparing the State's law to CERCLA, but may consider, when relevant, the State's past and current ability to select protective remedies, and to enter into and enforce consent agreements or orders with PRPs.

b. **Program Capability.** The State program should have sufficient capabilities, resources, and expertise to ensure that a CERCLA-protective cleanup is conducted as well as coordinate with EPA, other interested agencies, and the public on the various phases of implementation. Estimates of the State's capability may consider any significant past response actions the State has undertaken through the Federal Superfund program or its own program, the effectiveness of the State's program to achieve a protective cleanup, and the State's projected workload. The State should have the following capabilities.

   i. **Resources.** The State should have adequate, capable staff, funds, and other resources to conduct enforcement actions, including PRP searches, negotiations with PRPs, monitoring, oversight, and litigation.

   ii. **Monitoring and Oversight.** The State should have the capability to maintain adequate supervision of response actions, including, but not limited to: assuring and controlling the quality of data sampling and analysis, risk characterizations or assessments, and design and implementation of remedies; monitoring project progress; and communicating with EPA program managers.

   iii. **Community Participation.** The State should be able to involve affected communities in a manner that fosters appropriate community participation (as described in Section VII) in decisions regarding response actions at deferred sites.

To establish a clear understanding between the State and EPA that the State has the authority and capability to participate in an area-wide deferral program, the State program director and Regional Superfund program director should enter into a generic deferral Memorandum of Agreement certifying these criteria are met. As reasonable and appropriate, the Region may require the State to provide specific information to confirm EPA's basis for entering into the deferral agreement. Upon request, the Region should provide the basis for any decision declining to defer to the State.

If a State is interested in deferral and does not meet all of the criteria for establishing an area-wide deferral program, the Region and State may, at the Region's discretion, enter into site-specific deferral agreements, provided that site eligibility criteria are met. For example, a site at which the State enters into an enforceable agreement with a PRP to conduct a CERCLA-protective cleanup, even though the State does not have the statutory authority to compel response actions, may be appropriate for deferral. The Region may determine, as needed, that closer oversight and the application of other conditions are necessary to ensure a successful response action.

2. Sites Eligible for Deferral

Under the area-wide approach, the Region and State should mutually determine, generally based on an annual submission of deferral site candidates proposed by the State, which sites should be deferred. The Region and State should determine the eligibility of sites for deferral using the following criteria.

a. **State Interest.** The State must express interest in having the site deferred to it. The State and EPA also should agree that the State will address the deferred site sooner than, and at least as quickly as, EPA would expect to respond. (See Appendix A.)

b. **CERCLIS Listing.** The site proposed for deferral must be included in the CERCLIS inventory.

c. **NPL Caliber.** The deferred site should be "NPL caliber" as defined in the October 12, 1993, OSWER Directive, "Additional Guidance on 'Worst Sites' and 'NPL Caliber Sites' to Assist in SACM Implementation" (OSWER Directive 9320.2-07A) or the December 1992 fact sheet "Assessing Sites Under SACM--Interim Guidance" (OSWER Directive 9203.1-05I, Vol. 1, No. 4). Sites that are less than NPL caliber are generally not of Federal interest and the deferral program requirements need not apply at these sites. However, such sites may be deferred, should a State desire this option.

d. **Viable and Cooperative PRPs.** Under the deferral program, viable and cooperative PRPs generally must be available to conduct the response actions at a deferred site. The PRPs at a deferred site should be willing to enter into an enforceable agreement with the State to conduct all response actions (including providing for operation and maintenance) at the site and repay any State and Fund-financed response costs related to the deferral. Except under limited circumstances (i.e., where PRPs become recalcitrant or bankrupt, as described in Section VI), a State should not be using Superfund resources to conduct response actions at deferred sites. If the State is a PRP at the site, the Region should consider carefully the implications of deferring the site before making a decision. At sites where no viable PRPs exist, or where a State is willing to agree to settle for less than the full cost of the response action, the State must demonstrate that it has adequate resources of its own or viable agreements with other parties (e.g., prospective purchasers) to pay the necessary costs for the response action. (See Appendix A.)

e. **Timing.** Generally, a site is eligible for deferral until a State or contractor has been tasked to develop a site-specific Hazard Ranking System (HRS) package for it. If, however, the Region or State has already issued a task or work assignment to develop the package, the Region should defer the site only where the State provides a compelling argument why the listing process should be halted. In such cases, the Region should consider carefully the history of the State's involvement at the site and community acceptance of the deferral in making the determination whether to defer the site. In rare instances, sites proposed for the NPL, or sites for which an HRS package has been submitted to Headquarters, may be eligible for deferral. Sites on the final NPL are not eligible deferral candidates, though the Region may, through a cooperative agreement, assign to the State the lead for response at such sites. The Region should consult with the Office of Emergency and Remedial Response before deferring any site for which an HRS package has been initiated. (See Appendix A.)

f. **Community Acceptance.** Community acceptance of a deferral to the State is an important site eligibility criterion, and the State should work to gain and maintain community acceptance of the site's deferral to the State. The State should take appropriate steps to inform the affected community and other affected parties (e.g., communities downstream from the site,

PRPs, Natural Resource Trustees) of the proposed deferral 30 days prior to requesting that the Region defer the site and should seek affirmation from the community of its proposal. As appropriate, the State also should explain to the community and other parties any differences between a response under the deferral program and a response conducted under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), including, but not limited to, any differences in cleanup levels and public involvement. Additionally, the State should document all of its interactions with the community and inform the Region of possible opposition to the deferral.

If, at any time before a site is deferred to the State, the Region, after consulting with the State, determines that the community or other parties have significant, valid objections to the deferral that cannot be resolved, the Region should not defer the site. If, at any time after a site is deferred to the State, the Region determines that the community or other parties have significant, valid, unresolvable objections to the deferral, the Region should terminate the deferral status of the site (described in Section VIII). The Region should provide appropriate explanation to the community and other parties of decisions that do not favor the community's or other parties' objections. (See Appendix A.)

g. **Sites Involving Tribal Lands.** A site on or involving land or other resources under Tribal jurisdiction may be deferred to a Federally-recognized Tribe if the appropriate criteria are met. EPA will not defer such a site to a State unless the affected Tribe(s) agrees to the deferral through a three-party agreement with the State and the Region.

h. **Federal Facilities.** Consistent with EPA's current listing policy for Federal facilities, such sites are ineligible for deferral from NPL listing.

i. **Complicating Factors.** The Region, in consultation with the State, should consider factors which may present significant obstacles to successful response actions at the proposed deferral site. Such factors include, but are not limited to: complexity and degree of the environmental threat posed by the contamination; site history; current or anticipated Fund-financed activity; the PRPs involved at the site; and environmental justice and other community concerns.

3. Cleanup Levels

Section 121(b)(1) of CERCLA sets general standards for remedial actions carried out under CERCLA section 104 or secured under CERCLA section 106. These standards have been elaborated further in the NCP. Under section 300.430(f), a remedy conducted pursuant to the NCP must be protective of human health and the environment and must comply with applicable or relevant and appropriate requirements. Under the deferral program, although the State will oversee the response action at an NPL caliber site using its own authorities, the quality of the response action conducted still should be substantially similar to a response required under CERCLA, i.e., it should be a "CERCLA-protective cleanup." The following criteria define a CERCLA-protective cleanup.

a. **Protectiveness.** A CERCLA-protective cleanup at a deferred site should be protective of human health and the environment as defined generally by a 10^{-4} to 10^{-6} risk range and a hazard index of 1 or less. Generally, the State also should consider giving preference to solutions that will be reliable over the long term.

b. **Standards.** The remedy selected at a deferred site must comply with all applicable Federal and State requirements. Additionally, the State should generally select a remedy which provides a level of protectiveness comparable to relevant and appropriate Federal requirements for the site. (See Appendix A.)

4. Procedural Requirements

Procedural requirements for the deferral program should not be burdensome. Once the State and Region agree on which sites to defer to the State, the Regional Superfund program director should identify to the State program director in writing which sites EPA is deferring to the State. The Region also should indicate in CERCLIS that a site has been deferred to allow for appropriate tracking. (See Appendix B.)

The State and the Region should also agree to clarify mutual expectations for State-EPA interaction and each party's responsibilities at deferred sites. As mentioned in Section I, such expectations may be incorporated into a generic deferral memorandum, with documentation regarding site-specific information being added to the agreement or provided separately as appropriate. Minimally, the State and Region should agree to the following provisions in either an area-wide or a site-specific agreement.

a. **Roles and Responsibilities.** The Region and State should agree on the relationship between, and the roles and responsibilities of, EPA and the State for all phases of the response action at deferred sites. At a minimum, the agreement should address the degree to which EPA will provide oversight, document review (including review of the selected remedy), and technical or financial assistance.

b. **Schedule for Performance.** The State and Region should agree to a timeframe for commencing and conducting actions, including negotiating settlements with PRPs for each site. State negotiations with PRPs generally should be completed within six months of initiation, although the Region may allow the State up to six additional months to conclude its negotiations, as appropriate. All schedules should identify major milestones by which EPA can track reasonable progress at each deferred site.

c. **Documentation.** The State should agree to make available risk assessment data, remedy selection decision documentation, and supporting analyses for each site to allow for adequate public involvement and EPA oversight.

d. **Cleanup Level.** The State should agree to provide for a CERCLA-protective cleanup (as described in Section III) at each deferred site.

e. **Community Participation.** The State should agree to involve affected communities in decisions regarding the response action (as described in Section VII) at each deferred site.

f. **Natural Resource Trustees.** The State should agree to notify promptly the appropriate State and Federal trustees for natural resources of discharges or releases that are injuring or may injure natural resources related to a deferred site. The State also should include the trustees, as appropriate, in negotiations with PRPs.

5. EPA Oversight of States

At all deferred sites, the State has responsibility, with minimal EPA involvement, to provide for a timely and CERCLA-protective cleanup and to support the public's right of participation in the decision-making process. The Region should work with the State to determine the appropriate level of oversight that the Region should exercise at each site. The

Region may choose to conduct more or less oversight of the State at any particular site, depending on the State's experience, the complexity of the site, or other factors. The Region also should consider its assessment of the progress being made at deferred sites during any consideration of new proposals for sites to defer. Finally, the Region and State should consider incorporating the following practices, as appropriate, in any agreement between the Region and State regarding oversight.

a. **Review Deferral Program Criteria.** As needed, the Region should reconfirm the status of the State's authority and program capability to ensure the continuing success of response actions at current and anticipated deferral sites.

b. **Report on State-EPA Agreement Conditions.** The State should report to the Region at least annually on whether the conditions agreed upon in the State-EPA agreements are being met. The State also should report to the Region at least semi-annually any difficulties it is having meeting agreement conditions at any deferred sites, including negotiating settlements with PRPs.

c. **Annual Review.** The Region should meet at least annually with the State to discuss the State's progress at deferred sites, which should include a review of reports submitted by the State, performance schedules, attainment of milestones in site-specific agreements, data quality assurance and control, cooperativeness of the PRPs, cost recovery of site-specific funds awarded to the State under cooperative agreements with EPA, and participation of the affected community. Any State deferral events that are tracked in CERCLIS should be coded appropriately. (See Appendix B.)

6. Financial Assistance to States

As noted above, the State is responsible for acquiring the resources to conduct all response actions at deferred sites under the deferral program. A fundamental expectation of the deferral program is that viable PRPs will reach settlements with the State to respond at deferred sites; except as described in this Section, the deferral program generally does not anticipate that Fund resources will be used to conduct response actions at

deferred sites.[2] Consequently, PRPs or some other non-Federal source should provide the resources for site-specific activity, including enforcement and PRP oversight.

In some cases, the State may need resources to conduct certain activities, or supplement or strengthen its deferral program. As described below, the Region may enter into cooperative agreements with the State to provide funding to the State for certain purposes. Generally, the State should agree to seek to recover site-specific funds awarded to it, either from the PRP through an enforceable agreement or from another identified source. The State and Region also should agree in advance on how to allocate recovered costs. If the Region intends to provide deferral funds to the State, the Region should identify its resource needs for the deferral program in its annual budget development process.

a. **Core Program and Site-Specific Response Funding.** The Region may award to the State non-site-specific resources under a Core Program Cooperative Agreement to develop or enhance its overall deferral program implementation capability. The Region may also award funds to the State to conduct enforcement and oversight/administrative-related activities through a deferral site-specific enforcement or support agency cooperative agreement or provide deferral site-specific funding for site assessment where an assessment has not been conducted or completed. In the event that PRPs at a deferred site become uncooperative or bankrupt, the Region may, as appropriate, enter into a cooperative agreement with the State for non-time-critical removal or preremedial activity until settlements with PRPs are reached, the response action is completed, or until the deferral status of the site is terminated. (See Appendix A.)

b. **Subpart O Requirements.** A State receiving funds through a cooperative agreement must meet all applicable requirements of 40 CFR Part 35, Subpart O. The terms of the cooperative agreement will be subject to all appropriate Regional oversight. Cooperative agreement awards for deferred sites should use the sub-object class number 41.90 and use appropriate activity codes. (See Appendix B.)

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[2] If a site's deferral status is terminated, Fund resources also may be available for use, in accordance with appropriate regulations and policy.

7. Community Participation

Effective community involvement is a crucial aspect of response actions at NPL sites and is no less important for response actions at deferred sites. As described above, the State should assure that it will involve the affected community in the decision-making process at a deferred site and that the affected community does not have significant, valid objections to deferring the site to the State. The following conditions also should be met at a deferred site.

a. **Comparability with the NCP.** The Region should be confident that the principles of public involvement embodied in the NCP are maintained at deferred sites. The State must ensure that the impact of its efforts to involve the public, especially during the remedy selection and response action completion phases, will be substantially similar to the intended effect of implementing the procedures required by the NCP. (See Appendix A.)

b. **Information Assistance for Communities.** EPA does not have the authority to award Technical Assistance Grants at sites that are not on or proposed to the NPL. However, at each NPL caliber site that EPA defers to the State, the affected community should be able to acquire assistance to interpret information with regard to the nature of the hazard, investigations and studies conducted, and implementation decisions at the site. As appropriate, the State should provide resources or direct assistance to the affected community at the site for these purposes. If funds are necessary to provide assistance to the community, the State should seek such funding from the PRPs at the site if the State cannot provide funding itself.

8. Completion of State Response Action

a. **Certification and Confirmation.** Once the State considers the response action at a deferred site to be complete, the State should certify to the Region and the affected community that it has successfully completed its response and achieved its intended cleanup levels. As part of the certification, the State should submit to the Region response action completion documentation substantially similar to that described in the June 1992 OSWER Directive "Remedial Action Report; Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS).

Upon receiving the State's certification, the Region should confirm in writing that the site response has been completed. Alternatively, within 90 days after receipt of the certification, the Region may initiate a deferral completion inquiry to validate the certification. As part of the inquiry, the Region should work with the State to address any deficiencies hindering the confirmation and agree to a timeframe for completion of the inquiry. Upon completing the inquiry, the Region should either confirm completion of the response or terminate the deferral status of the site (described below). If the Region does not confirm the response completion, terminate the deferral, or initiate an inquiry within 90 days of its receipt of the State certification, the status of the site will be recorded in CERCLIS as a deferral completion. (See Appendix B.) Once the response at the site is recorded as complete, the site will be removed from CERCLIS and will not be evaluated further for NPL listing or another response unless EPA receives new information of a release or potential release at the site that poses a significant threat to human health or the environment.

b. **Termination of Site Deferral Status.** Pending 30 days notice to the State, the Region should terminate the deferral status of the site, if, at any time during or upon completion of a response action, the Region determines that the response is not CERCLA-protective, is unreasonably delayed or inappropriate, or does not adequately address the affected community's concerns. The Region also should terminate the deferral if significant PRPs breach their agreements with the State and the State is unable to enforce compliance or provide other sources of funding to complete the response action. In addition, the Region may terminate the deferral and implement emergency or time-critical response action without 30 days notice to the State if the Region determines such action is necessary. The State may also choose at any time, after 30 days notice, to terminate the deferral for any reason.

Upon terminating the deferral status of the site, the Region should immediately consider taking any necessary response actions and should initiate consideration of the site for NPL listing. The Region and State should coordinate efforts to notify the community and PRPs of the termination of the deferral. These actions will assure the public that EPA will continue to respond at a site where response actions have begun and will encourage PRPs to forge and

fulfill successful agreements with the State. At the Region's request, the State should provide to the Region all information in its possession regarding the site for which the deferral status has been terminated.

APPENDIX A: Question and Answer Supplement

Question and Answer Supplement to the Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions

PURPOSE

This appendix supplements the "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Directive 9375.6-11). This appendix provides responses to significant questions that arose during development of the guidance and is presented in a "question and answer" format.

BACKGROUND

Following the June 23, 1993, "Superfund Administrative Improvements, Final Report," the Environmental Protection Agency (EPA) established a work group to develop the Superfund State deferral guidance. This guidance intends to enable Regions and States to determine the most appropriate, effective, and efficient means to address more sites more quickly than the sites otherwise would be addressed. As the guidance was drafted, work group members and others raised numerous implementation questions. While many questions have been resolved in the final guidance, this appendix provides clarifying responses to remaining significant questions. The questions are not divided by category, but roughly follow the outline of the guidance. Throughout this document, the term "State" also includes Territories, Commonwealths, and Federally-recognized Indian Tribes.

QUESTIONS AND ANSWERS

1. How will EPA determine whether a State can address a site "sooner than, and at least as quickly as," EPA?

   The deferral program is intended to enable States to conduct responses at sites where EPA would not otherwise respond in the near future. Deferral should not indefinitely postpone commencement of site response nor prolong the expected duration of a response; hence, the guidance states that a State should agree to address deferred sites sooner than EPA would expect to commence responding, and at least as quickly as EPA would expect to implement its response. This objective assures that deferred sites will be addressed and not merely be shifted from the Federal queue to a State queue. If a Region already has developed a schedule for conducting response

activity at a site, this schedule may serve as a basis for setting expectations for the State's response. Site-specific response schedules, including PRP-negotiation timeframes, should be incorporated into deferral agreements established between the State and the Region.

2. What particular factors should the Region consider before deferring a site at which the State is a potentially responsible party (PRP)?

   Although a State may be best able to conduct a response at a site at which it is a significant PRP, the Region and the State need to consider carefully the potential for conflict of interest, or the appearance of conflict of interest. Any such appearance could diminish the credibility of the State program with the public and could thus threaten its effectiveness. Close coordination with the affected community at such a site will be critical to ensure that the public does not perceive any conflict of interest and agrees that a State response is most appropriate.

3. What factors constitute a "compelling argument" to defer a site for which an Hazard Ranking System (HRS) package has been developed?

   Although a site will generally be ineligible for deferral after a State or contractor has been tasked to prepare an HRS package, the Region may defer such a site if the State provides a compelling argument why the listing process should be halted. The Region ultimately will determine whether the State proposal is viable, but any proposal to defer such a site should be documented and contain the following information: an explanation of the benefit of the deferral; an enforceable agreement with the PRPs (or other non-Fund sources); a time table providing for a response at least as timely as that proposed by EPA; and assurances that all costs of the response, including preparation of the HRS package, will be borne by the PRPs (or other non-Fund sources).

4. When and how should a State inform the community of a proposed deferral? Who should be informed?

   Under the deferral program, a State must demonstrate, on a State-wide basis or on a site-specific basis, that it has the capability to fully involve affected communities in decisions regarding response actions at sites both before and after the sites have been deferred. Furthermore, a State should notify the affected community 30 days prior to requesting the Region to defer a site and should seek the community's affirmation of a deferral proposal.

However, the January 1992 EPA directive, "Community Relations in Superfund: A Handbook" (OERR Directive 9230.0-03C), recognizes "there can be no universal approach for community relations" and that the "issues of importance to the public, the level of concern, the history of public involvement, and the social structure of the community will vary from site to site." Thus, although the deferral guidance offers some provisions to ensure that communities at deferral sites are adequately involved, the guidance does not prescribe a particular means that a State must use to achieve this end. Rather, the State will generally have the discretion and the responsibility to determine the most appropriate means to identify, notify, and continue to involve communities affected at deferral sites.

5. How will the Region determine what are significant, valid community objections that would deny or terminate a deferral?

Characterizing community concern at a deferred site often will be a difficult process. Different and changing levels of community awareness, interest, or comprehension; differences in the capabilities of various community members to make themselves heard or wield political influence; even attempts to precisely define the affected community at a site will preclude decision-making based on quantitative analysis. Full community unanimity is rare; and in virtually every community, dissenting opinions will persist. Therefore, while community acceptance is a critical aspect of the deferral program, community consensus is not required for deferral.

The State and the Region must rely on their best professional judgment to determine the composition of the affected community and who represents it, the validity of the concerns that the community expresses, the opportunity to accommodate community concerns, and the potential impact of proceeding without community consensus. However, when considering who represents the affected community, the State and Region should take particular care to be cognizant of populations that may be downwind or downstream of the site, as well as be aware of environmental justice issues that may have bearing at the site. If community objections that the Region determines to be significant and valid cannot be resolved between the community, State, and EPA, the Region should reject or terminate the deferral. Also, to assure that community concerns are addressed fairly, the State, with EPA involvement as necessary, should document the response to the community's objections.

6. How might environmental justice considerations affect response action at a deferred site?

Because sites that are deferred should receive attention more quickly than they otherwise would, effective deferral responses may provide a useful mechanism for resolving some environmental justice concerns. At sites where environmental justice is an issue, a State must show extra sensitivity to the special needs of the community by tailoring its outreach efforts to the community as well as facilitating access to, and enabling interpretation of, information. Establishing a positive rapport with the community at a deferral or any other site should result in wider acceptance of a proposed response.

Additionally, because the Agency is committed to addressing environmental justice issues in all its programs, the State should expect the Region to be especially interested in sites associated with environmental justice concerns. The Region should consider playing a greater role in communicating with the community during consideration of such a site for deferral, review State interaction with the community during the response, and coordinate with the State to respond directly to concerns raised by the community.

7. What must a State do to ensure that the impact of its community involvement program is "substantially similar" to the intended effect of implementing the procedures required by the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)?

The 1992 OERR Directive "Community Relations in Superfund: A Handbook" (Directive 9230.0-03C) identifies three overall objectives, or principles, upon which the implementation of the Superfund community relations program is founded. These principles are:

- Provide the public the opportunity to express comments on and provide input to technical decisions;
- Inform the public of planned or ongoing actions; and
- Identify and resolve conflicts.

These principles, though not identified specifically in the NCP, encompass the community involvement procedures which the NCP describes. While State adherence to the specific procedures of the NCP is not required for the deferral program, a State community relations program should embrace similar principles and be able to demonstrate its ability to implement such principles at deferred sites.

8. Are mixed-ownership (Federal/non-Federal) sites eligible candidates for deferral?

Federal facilities currently are not eligible for the deferral program. Sites of mixed Federal and non-Federal ownership, however, may be eligible deferral candidates depending on site-specific circumstances. The Region should consult with the Office of Emergency and Remedial Response in making this determination.

9. Must a risk assessment be performed at every deferred site? May a State allow PRPs to perform risk assessments?

As appropriate to the circumstances at each deferred site, the State should characterize the nature of, and threat posed by,the hazardous substances and materials at the site and should gather data necessary to support the analysis and design of potential response actions. In some instances, the State may prefer to have a PRP conduct this characterization In either case, the State should have demonstrated its ability to conduct or oversee risk characterizations or assessments in accordance with the capability criteria identified in Section I of the guidance.

10. Will EPA assist States in identifying applicable or relevant and appropriate requirements at deferred sites?

Upon request from the State, the Region should provide assistance to the State in interpreting CERCLA requirements, including identification of Federal applicable requirements and Federal relevant and appropriate requirements. The State retains the responsibility and discretion to identify and implement State applicable or relevant and appropriate requirements at a deferred site, including those that are more stringent than Federal standards.

11. Can deferred sites be exempted from obtaining permits for activities conducted on-site?

The Agency has determined that CERCLA does not authorize permit exemptions for response actions carried out under the deferral program. CERCLA section 121(e) exempts on-site remedial action, which is selected and carried out in compliance with CERCLA section 121, from Federal, State, and local permit requirements. Deferral response actions, however, will be conducted under State authority, and therefore cannot use the exemption provision.

12. Can Federal funds pay for State-lead removal actions?

Under the deferral program, PRPs are generally expected to conduct all appropriate responses at deferred sites. The Region should not defer sites at which the State anticipates using Fund resources to conduct removal activities. However, should PRPs at a deferral site become recalcitrant or bankrupt, the State may receive a removal cooperative agreement, provided "a planning period of more than six months is available" (40 CFR 35.6205), and pursuant to other 40 CFR Part 35, Subpart O, requirements.

13. Must States document expenditures of Federal funds at deferred sites?

Any funds that a State receives through a cooperative agreement with EPA are subject to all applicable requirements identified in 40 CFR Part 35, Subpart O. For site-specific expenditures incurred by a State under a cooperative agreement, including any site assessment activity or HRS scoring that takes place after a site is deferred, the State is required to track expenses by site, activity, and operable unit, as applicable, according to object class. Non-site-specific funds awarded to a State through a Core Program cooperative agreement also are subject to the applicable requirements in 40 CFR Part 35, Subpart O, but are not expected to be recovered by the State.

14. Under what conditions would site assessment activities be performed at a deferred site?

At many sites that will be deferred, a site assessment will have already taken place, the results of which will indicate that a site is NPL caliber. In some cases, however, a Region may agree to defer a site that the State and Region suspect is NPL caliber even though a site assessment has not been completed. At such sites, the Region and State may determine that completing a site assessment is appropriate. Generally, however, the PRPs at a deferred site should agree to pay for the site assessment if one has not already been conducted. (See also Question 16.)

15. Who will recover the costs of site-specific cooperative agreements that EPA awards to States under the deferral program? What will happen to recovered funds?

Because the value of cooperative agreements at deferred sites typically will be very low, EPA will generally not expect to attempt to recover these costs. However, any site-specific cooperative agreement for deferral into which

the Region enters with the State should stipulate that the State will seek to recover from the PRPs recoverable costs incurred under the cooperative agreement. Regions also should make clear to States that EPA does not expect to award funding indefinitely to States under the deferral program; rather the Agency expects that sums recovered by the States will be used to build the State capability to fully implement deferral programs without EPA funding in the future.

16. Would a response action be considered complete if waste had been removed off-site, but a complete cleanup had not been conducted?

Response actions at deferred sites should be CERCLA-protective, as described in Section III of the guidance. If a response action does not meet this criterion, the Region should terminate the deferral, immediately consider taking necessary response actions, and initiate consideration of the site for NPL listing.

EPA expects that partial cleanup of an NPL caliber site would not reduce the site's HRS score below the threshold for eligibility for NPL listing. However, if the Region believes that a partial response could preclude a deferred site's eligibility for NPL listing where a site assessment had not been completed, the Region should have a site assessment conducted before any deferral response is undertaken. At a terminated deferral site, where a site inspection was not commenced prior to the response action, the Region should refer to the September 1993 OERR Publication "The Revised Hazard Ranking System: Evaluating Sites After Waste Removals" (OERR Directive 9345.1-03FS) to evaluate the site's eligibility for NPL listing.

APPENDIX B: Instructions on Financial Tracking

Instructions on CERCLIS/WasteLAN and GICS/IFMS Financial Tracking for the Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions

PURPOSE

This appendix provides instructions on how to use information management systems to track site progress and financial management information for NPL caliber sites that have been deferred to States under the "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Directive 9375.6-11).

BACKGROUND

The Superfund State deferral guidance provides direction to Regions for implementing the State deferral program and includes criteria for establishing State capabilities, selecting sites, and entering into agreements with States to compel and implement PRP response actions. The guidance requires minimal EPA oversight and provides Regions and States flexibility to negotiate agreements that reflect State- and site-specific circumstances. The Agency nevertheless will be expected to be able to demonstrate the deferral program's accomplishments and to ensure EPA and State accountability. Consequently, Regions need to report certain information into CERCLIS/WasteLAN. Regions may also wish to take advantage of CERCLIS/WasteLAN to conduct their own tracking of progress at sites.

Also, to ensure that information regarding awards to States for site- or non-site-specific deferral activity, Regions need to use appropriate sub-object class codes in awarding cooperative agreements and track these obligations in CERCLIS or CERHelp, as appropriate.

IMPLEMENTATION

New CERCLIS lead, event, qualifier, and sub-event definitions to enable tracking of key information regarding deferred sites will be included in the FY95 Superfund Program Management Manual and the CERCLIS data element dictionary.

In addition, a new sub-object class code (41.90) has been established to track resources awarded to States under site-specific deferral cooperative agreements. The attached Office of the Comptroller Policy Announcement No. 94-07 describes this code.

New LEAD SD (C2117 and C1707): STATE DEFERRAL

Definition: LEAD SD is a PRP- or State-financed response action at an NPL caliber or proposed NPL site overseen or conducted by the State pursuant to a deferral agreement with the Region, as described in OSWER Directive 9375.6-11. With limited exceptions, Fund-financing for deferral response actions will not be available.

The LEAD SD will be used in conjunction with the new STATE DEFERRAL EVENT (C2101 = SD) and associated qualifiers and subevents (see below) to track start and completion dates of responses at deferred sites. Other response or enforcement accomplishments and/or reports may be tracked using the LEAD SD (C2117 or C1707) and current CERCLIS response event or enforcement activity codes, as appropriate, at the Region's discretion.

New EVENT SD (C2101): STATE DEFERRAL

Definition: EVENT SD indicates that the Region has entered into an agreement with a State to defer from listing on the NPL an NPL caliber or proposed NPL site, while the State uses its own authority to compel and oversee PRP response or implements a response using its own resources. This event is located in the 00 operable unit.

The SD START DATE (C2140) is the signature date of the document sent from the Regional Superfund program director to the State program director that defers the site to the State under the terms established in the deferral guidance. For sites that were deferred under the deferral pilot program (prior to the issuance of the guidance), the SD START DATE will be the date that EPA Headquarters formally confirmed the pilot status of these sites.

The SD COMPLETION DATE (C2141) is:

- The signature date of the formal Regional document that either confirms that the deferral has been completed successfully or terminates the status of the deferral. Qualifiers (see below) must be used to indicate whether the deferral has been successfully completed (C2103 = S) or has been terminated (C2103 = T).

OR

- The date 90 days after the date EPA receives State certification that the deferral has been completed (see SC SUBEVENT below), if the Region neither formally confirms the deferral completion nor initiates a deferral inquiry (see SE SUBEVENT below) within 90 days of

receiving the State certification. The qualifier indicating that the deferral has been successfully completed (C2103 = S) must be used (see below).

If, upon agreement with the State, the Region formally confirms the State's certification after the 90 day period, the SD COMPLETION DATE may be updated to reflect the date of the formal confirmation. Figure 1 provides a flowchart for determining the SD completion date.

New QUALIFIERS (C2103 = S or T) FOR EVENT = SD

Definition: QUALIFIER C2103 = S signifies that the Region either has confirmed formally that the State deferral has been completed successfully or that the Region has not responded within 90 days of receipt of the State's certification that it has completed the deferral successfully. Sites at which a deferral has been successfully completed are eligible for removal from CERCLIS, pursuant to Agency policy for removing sites from CERCLIS.

Definition: QUALIFIER C2103 = T signifies that the Region has terminated the status of the deferral. This qualifier is used when the Region terminates the deferral during the course of the response or in conjunction with a deferral inquiry (see SUBEVENT SE below) conducted at the completion of the response that results in termination of the deferral.

New SUBEVENT SC (C3101): State Completion Certification

Definition: SUBEVENT SC is the date the Region receives the State's submission of response action completion documentation certifying that it has completed successfully its selected remedy at the site and has achieved its intended cleanup levels. Within 90 days of receipt of the documentation, the Region must confirm successful completion of the deferral formally (SD COMPLETION DATE) or initiate an inquiry to confirm the certification (see SUBEVENT SE below). If an inquiry is not initiated within 90 days of the SUBEVENT SC date and the Region has not confirmed the deferral completion formally, the EVENT SD COMPLETION DATE will be the date 90 days after the SUBEVENT SC date.

New SUBEVENT SE (C3101): State Deferral Inquiry

Definition: SUBEVENT SE is the date that the Region initiates a deferral inquiry to confirm the State's certification that it has completed its selected remedy successfully. The inquiry must be initiated within 90 days of EPA's receipt of the State's certification that the remedy has been completed (SUBEVENT SC) or the SD COMPLETION DATE will be the date 90 days after the SUBEVENT SC date. Once the Region completes a deferral inquiry (which may be after the 90 day period), the Region must

issue a document which either confirms successful completion of the deferral or terminates the deferral status of the site. The SD COMPLETION DATE is the signature date of this document, and the appropriate qualifiers (C2103 = S or C2103 = T) must be used.

Financial Tracking in CERCLIS/CERHelp

Cooperative agreements may be awarded to States to assist implementation of the deferral program on a site- or non-site-specific basis. Site-specific cooperative agreements should be tracked under the C2101 = SD event, and non-site-specific (Core Program) cooperative agreements should be tracked in CERHelp under C304 BA-TYPE = CG.

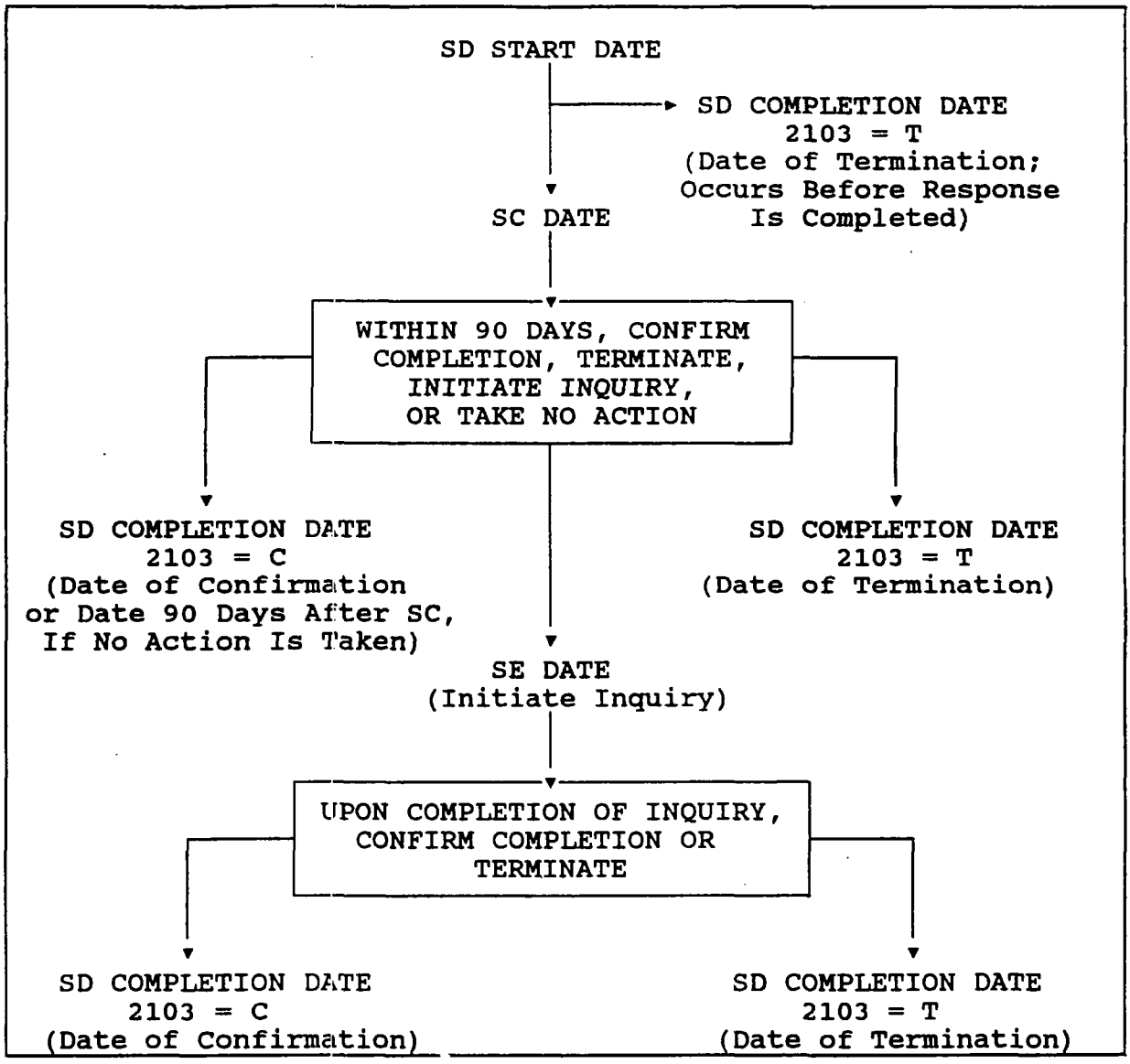

Figure 1: Flowchart for Determining SD Completion Date

APPENDIX C: Policy Announcement No. 94-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

(Signed) June 08, 1994
OFFICE OF THE COMPTROLLER
POLICY ANNOUNCEMENT NO. 94-07

MEMORANDUM

SUBJECT: New Sub-object Class Code for Deferral Program Cooperative Agreements

FROM: Kathryn S. Schmoll
Comptroller (3301)

TO: Assistant Regional Administrators
Management Division Directors
Regional Comptrollers
Senior Budget Officers
Financial Management Officers

PURPOSE

This Policy Announcement (P.A.) establishes a new sub-object class code for deferral program cooperative agreements.

POLICY

The new sub-object class code to be used for the deferral program cooperative agreements is described below:

41.90 Deferral Program Cooperative Agreements. Awards to States, Territories, Commonwealths, or Indian Tribes to conduct site-specific activities at National Priority List (NPL) caliber sites which have been deferred from NPL listing consideration while recipients compel and oversee Potentially Responsible Party (PRP) response actions. May not be used to conduct or support Fund-financed remedial action at a deferred site. Awards are subject to 40 CFR Part 35, Subpart O. [Assistance program code "V" (CFDA number 66.802)]

EFFECTIVE DATE

This new sub-object class code is available for immediate use. It will be included in the next revision of Resources Management Directives System 2590, Part IV, Object Class Codes.

FOR ADDITIONAL INFORMATION

Should you have any questions on this P.A., please contact Charles Young of the Superfund Accounting Branch on 202-260-6890.

cc: David J. O'Connor
David Osterman
Elizabeth Craig
FMD Branch Chiefs